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749458
Sup. Ct.

Vol. I

TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1945 6

No. 309 25

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE, ET AL., ETC., PETITIONERS,

vs.

FRANK L. ARAGON AND OTHER APPLICANTS, MEMBERS OF ALASKA CANNERY WORKERS UNION LOCAL No. 5, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 10, 1945.

CERTIORARI GRANTED OCTOBER 8, 1945.

Office - Supreme Court, U. S.
FILED
AUG 10 1945
CHARLES ELMORE CROPLEY
CLERK

TRANSCRIPT OF RECORD
IN THREE VOLUMES

IN THE

Supreme Court of the United States

October Term, 1945

No. 309

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as Members of and Constituting said Commission, and ALASKA PACKERS ASSOCIATION, a corporation, ALASKA SALMON COMPANY, a corporation, and RED SALMON CANNING COMPANY, a corporation,

Petitioners,

vs.

FRANK L. ARAGON and Other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL No. 5 on Behalf of Applicants,

Respondents.

VOLUME I

Pages 1 to 394

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Rotary Colorprint, 661 Howard Street, San Francisco

No. 10425

United States
Circuit Court of Appeals
For the Ninth Circuit.

FRANK L. ARAGON and Other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL No. 5 on Behalf of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as Members of and Constituting Said Commission, and ALASKA PACKERS ASSOCIATION, a Corporation, ALASK SALMON COMPANY, a Corporation, and RED SALMON CANNING COMPANY, a Corporation,

Appellees.

Transcript of Record
In Two Volumes
VOLUME I
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Upon Appeal from the District Court of the United States
For the Territory of Alaska
First Division

Rotary Colorprint, 590 Folsom St., San Francisco

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Attorney for Defendants.

H. L. FAULKNER,

Juneau, Alaska,
Attorney for Respondents.

Territory of Alaska
Alaska Unemployment Compensation Commission
Hearing Before Referee

June 17-19, 1940
10:00 A.M.

FRANK L. ARAGON, et al., Members of Alaska Cannery Workers Union, Local 5, San Francisco, California, S.S.A. No. 571-09-8139
Claimants

ALASKA SALMON INDUSTRY INC., San Francisco, California
Last Employer

601 News Building
San Francisco, California

Referee: HENRY RODEN

Appearances:

MARSHALL P. MADISON,

Counsel for Alaska Packers and Red Salmon Companies
Pillsbury, Madison & Sutro,
225 Bush Street, San Francisco.

WILLIAM OLIVER,

Counsel for Alaska Salmon Company,
Earl & Hall & Gerdes,
215 Market Street, San Francisco.

HERBERT RESNER,

Counsel for Alaska Cannery Workers Union,
Local No. 5, C.I.O.,
544 Market Street, San Francisco. [1*]

TRANSCRIPT OF EVIDENCE

CLAIMANTS' EXHIBIT No. 1

(Copy)

ANDERSON & RESNER
Attorneys at Law
544 Market Street
San Francisco

May 11, 1940

Alaska Unemployment Compensation Commission
Juneau, Alaska

re: Frank L. Aragon
Social Security No. 571-09-8139

Gentlemen:

We are counsel for the Alaska Cannery Workers Union, Mr. Aragon being a member of said Union.

Our client has filed a claim for unemployment benefits through the California Department, under the interstate agreement and yesterday we received a letter from your department in which you advise that our client is disqualified for a period of eight weeks, the reason for such disqualification being an alleged labor dispute.

At the present time no member of the Alaska Cannery Workers Union, including our individual client, is engaged in a labor dispute. The San

*Page numbering appearing at foot of page of original certified Trancript of Record.

Claimants' Exhibit No. 1—(Continued)

Francisco packers do not intend to go to Alaska this year and hence the inability of our individual client to work in Alaska is due to no fault of his and in particular it is no fault of the Union, but is the fault, if fault it may be called, of the Alaska Packers who have their offices in San Francisco.

We might state that there, of course, can be no labor dispute when actual employment does not exist, and as you know this is mere seasonal employment.

We would request not only on behalf of our above named individual client, but on behalf of all the members of the Alaska Cannery Workers Union that a hearing on this question be scheduled in San Francisco, the local State office to act as a referee in the matter to determine the question whether a labor dispute actually exists, unless you are constrained to accept this explanation of the inability of members of this Union to work in Alaska this season.

Yours very truly.

GEORGE R. ANDERSON

(Stamped)

GRA:eb

cc: Alaska Cannery Workers Union
Department of Employment,
State of California. [5]

Claimants' Exhibit No. 1—(Continued)

(Copy)

May 14, 1940

Alaska Unemployment Compensation Commission
Juneau, Alaska.

Re: Members named on attached list.

Gentlemen:

You have written to our above named members advising that they are not eligible for unemployment payments by virtue of the fact that you claim their present unemployment is due to a labor dispute.

Please be advised that our members' present unemployment is not due to a labor dispute and that we request a hearing be held in San Francisco at your earliest convenience in order to determine said question.

We incorporate herein our letter to you dated May 11th, 1940, in which reference is made to the case of Frank L. Aragon, Social Security No. 571-09-8139.

Yours very truly,
SAM YOUNG,
Secretary
ALASKA CANNERY WORKERS UNION #5

SY:D
Encl
nopwa-34

Claimants' Exhibit No. 1—(Continued)

Claimants' Exhibit No. 1

(1)

Name	Social Security No.
Sing Tom	567-16-7833
Quong Chin	567-16-7814
Sam You	567-16-7816
Alfonso L Plasabas	555-03-5094
Philip R. Olita	571-09-6714
Mamerto Diangzon	571-09-6644
Vincente Osorio	567-16-7645
Sotero Cadano	566-14-4924
Albert Rangel	566-10-3883
Cornelio Bayubay	558-10-4752
Frederick Balmania	566-16-8364
Clarence Davis	566-03-1697

[6]

(2)

Elioterio Amable	566-14-2954
Juan Jokoya	566-09-5148
Nuncio Ayalas	577-26-0608
Manuel Jackson	556-03-0779
Ramon Burciaga	566-05-6294
Julian Guerrero	566-10-0539
Luis Castro	566-12-7376
Alejandro Nunez	556-16-7125
Candido Santander	566-10-9326
Anacleto Ingreso	566-16-0247
Alfonso Cesena	566-14-3576
Frank Gironella	567-16-7704
Albert A. Eslera	571-09-6691
Takeo Ishimori	566-14-8572
Albert Valencia	566-02-6914

Claimants' Exhibit No. 1—(Continued)

Name	Social Security No.
Minoru Hatta	567-07-1984
Sixto Escalona	567-16-7830
Emilio Westphal	571-09-8105
Chow Wong	546-01-3044
Frank Fukuda	570-10-9834
Harry K. Kralian	571-09-8106
Filimon Vargas	566-10-3122
Esteban Cortez	566-12-2524
Philip Cano	561-03-5314
Antony Palacio	566-03-8724
Agapito Exchavaria	566-03-9498
3	
Chan D Tsue	561-05-8489
Miguel Vengua	556-01-7005
Gregorio Avelino	566-12-0447
Angel Vasquez	566-05-4436
Bernardo Gonzales	566-12-0084
Akira Kobata	556-16-2225
Chan Foon	546-16-3416
Woo Yim	566-16-9334 [7]
Rahmat A. Sadique	566-14-8621
Pedro T. Villas	571-09-6799
Lucio Macias	566-01-1818
Javier Andrade	566-09-5708
Hay Hoo Soo	567-16-7836
Suey Song	566-10-3629
4	
John Harris	563-12-5381
Samuel Levine	561-07-0046
Jesus M. Burciaga	566-12-9291

Claimants' Exhibit No. 1—(Continued)

Name	Social Security No.
Loreto Ramirez	700-10-9426
Conrado Amador	571-09-6704
John Gallegos	566-18-8245
Jose De Avila	566-03-3901
Gilberto Galaviz	566-14-4751
Memesio Rojo	546-16-2945
Salvador Garcia	566-05-1452
Margarito Gonzales	571-07-8102
Sherman Shelton	566-01-6388
Victoriano Landicho	566-12-0088
Turo P. Famero	569-18-2513
Richardo Estrada	566-10-9605
Henry LaDezma	560-01-9976
5	
Tiburcio Y Vios	566-16-1781
Antonio Mateo	552-14-4960
Zee Yum	566-16-6916
James J. Torres	566-14-8267
Francisco Flores	566-14-4519
Wong G. Fong	566-07-1988
August Santiago	566-14-1605
Juan E. Perez	566-05-1960
John J. Puga	566-07-6501
Sianing Cabotaje	566-16-2280
Manuel Garcia	566-07-0200
Louis Zuazaga	566-07-0393
Milton Olguin	566-01-4382 [8]
Frank Segovia	566-07-4020
Pete O. Pedroza	566-16-6290
Cipriano Conahap	546-18-3020

Claimants' Exhibit No. 1—(Continued)

Name	Social Security No.
Andy L. Usita	566-14-5511
Bernardino Olmos	566-14-2386
Tony Perez	566-01-5644
Alex Montelongo	566-01-0621
Stephen Jesse Medina	561-05-3322
Herminio Mora	566-03-2303
Pascual Garcia	566-09-1973
Theodora Martinez	566-01-0901
Percy T. Duque	566-10-6344
Emilio Montoya	566-12-9101
Jose Maganda	566-01-5620
Albert Bot SooHoo	571-05-3511
Vincente Abringe	566-10-5295
6	
Yen Shoo	571-01-6641
Silverio Beza	571-09-6443
Look Low	547-26-3826
Estanislao Banaag	561-05-3285
Urbano Favela	566-12-3338
Maurice Whaley	567-16-7798
7	
Joe Corry	572-03-0323
Vincent A. Rendon	566-03-1644
Joe Moy	566-16-9287
Ernest Garcia Valverde	566-09-9342
Manuel Joseph Valdez	566-12-5223
Julian Egeasenza	566-03-2466
Virginia H. Nixon	561-05-7135
Ah Gom	566-16-9313
Robert Castillo	700-10-7381

Claimants' Exhibit No. 1—(Continued)

Name	Social Security No.
John Fancolli	556-16-3214
Constantino Herran	566-14-2950
Francisco de Pano	567-16-7811
Jose G. Silva	561-05-2614 [9]
Antonio Rivera	547-26-3085
Severo Cablayan	571-07-8143
Tin Chin	572-18-7403
On Goy Wong	554-07-1407
Richard Pebeco	571-09-8135

8

Frederick Cordova	566-14-6010
Manuel Faria	566-03-8721
Alfonso Cesena	566-14-3576
Jesus Mendoza	570-10-3330
Young Lee	552-03-4888
Lung Wong	566-16-9302
Horace Wah Lee	565-01-6987
Harry Chin	566-16-9331
Ng Gun	566-16-9289
Chew Chong	566-16-7267
Daniel Cosio Castro	566-07-5673
Benjamin Torres	566-12-8164
Raymundo Galeana	571-09-8144
Antonio M. Moreno	566-14-5060
Chew Foon	571-09-6646
Ling Hee	571-05-4370
Leon Rotao	566-07-5251
Manuel Santo Lobo	566-14-4111
Jesus Avila	561-05-7963
Luis Perez	566-07-1587

Claimants' Exhibit No. 1—(Continued)

Name	Social Security No.
Alfredo Varela	566-16-1740
Thomas T. Mendoza	566-12-5135
Ezequiel Fuentes	566-12-9296
Juan Jokoya	566-09-5148
Jesus Bran	566-16-4616
9	
Toshizo Asari	547-03-2338
Yojiro Amemiya	566-12-2518
James R. Livelo	571-07-6788
Conrado Jalocon	566-14-2989
Estaban Omandan	711-05-0059
John Dudico Lachica	571-09-6716
SooHoo B. Jow	567-16-7793 [10]
Genaro C. Mabares	*571-09-6801*
Pastor de Padua	*571-09-6801*
Domingo Yota	561-05-2628
Armando Augustino	567-16-7809
Fong Chow	566-16-9311
Joe Wing	566-16-7208
Daniel Quipotla	567-16-7707
Guillermo A. Andrade	566-14-1449
Enrique Romo	550-10-8806
Emilio Caasi	567-16-7825
Cirilo Zarno	571-09-7158
10	
Chi Saw	566-16-7832
Arthur Bravo	566-03-1655
Victor Carinos Gomez	566-05-4376
Alfredo Ruiz	566-09-9057
Amador Troche	566-14-3097

Claimants' Exhibit No. 1—(Continued)

Name	Social Security No.
Ygnacio Mendoza	566-14-9916
Loreto Osuna	566-12-5157
Marcelino Caliao Sirna	566-16-2776
Anton J. Wilbertz	566-03-3254
Wilhelm A. Jensen	547-07-3907
Manuel Simon	566-16-0756
Antonio Pomares	566-16-1785
Vincente Rojo	566-12-3345
John Beles Fraticelli	560-03-5716
Quong San	572-78-7401
Daniel Garcia	571-09-6703
Felipe Arrieta	566-14-7412
Epifanio Ortiz	566-05-0423
Silvino Rodriguez	573-16-8745
Vincente Gomez	566-14-0082
Louis Joseph Murray	566-16-6292
Julio Bastida	566-14-5663
Ton Toy	566-07-6751
Frank Lester Stout	530-03-1293
Lauribo V. H. Florup	558-01-1002 [11]
Jose Huguet	552-14-6393
Mee Lai	571-09-6712
Chong Foon Au	552-14-8171
Gem Jew Wing	566-16-7261
Henry Borrero	566-14-1602
Macedonio Gonzales	566-05-2442
Miguel Sanhuesa	566-14-2992
Abdon Tomate	566-16-2282
John Gordon Livingston	565-10-8721
Sianing Cabotaje	566-16-2280

Claimants' Exhibit No. 1—(Continued)

Name	Social Security No.
Maximo Lucerna	566-05-9556
J. D. Ferniz	567-07-1512
Mariano J. Fernan	566-10-3866
Wm. L. Noland	565-01-8737
Manuel Defuentez	566-07-5674
Edward Lecaros	566-18-0100
Frank Alvis	566-14-0175
Chester Wells	566-01-0325
Gilbert Vargas	566-14-0084
Hugh Lee Gadson	566-05-4474
Arthur Byron Smith	566-07-0395
Juan Arriola	566-12-6244

12

UNEMPLOYMENT COMPENSATION FOR ALASKA

Wilburn Burton	566-01-2044
Gilbert Vargas	566-14-0084
Juan Peralta	546-16-2252
Ignacio Castaneda	566-14-6930
Antonio Gomea	566-12-5120
Ignacio Gallego	566-14-1606
Takuro Omi	554-18-2015
Arthur Chan	566-16-9966
Antonio Fuentes Gomea	566-05-2881
George Agrisula	561-03-4430
Marin Lopez	566-14-4939
Frederick Balmania	566-16-2364
Jim Lee	566-16-6912

Jose DeAvile Book #312 [12]

CLAIMANTS EXHIBIT No. 2

Alaska Salmon Co.
525 Market Street,
San Francisco, California.

April thirtieth, 1940.

Alaska Cannery Workers Union
Local No. 5, C. I. O.
32 Clay Street,
San Francisco, California.

Attention Mr. Rendon:

As your organization has been advised by the Alaska Salmon Industry, Inc., this company cannot make any expedition to Alaska out of San Francisco this season and accordingly will not have employment, or be able to ship any men on our steamers to our various canneries this year.

Despite this decision on our part, we are desirous of having a clean record with your organization and refer you to our correspondence over the claims ex this company during the 1938 season, your letter of November 8, 1938, and subsequent correspondence. Despite the fact that we are advised by our attorney that your claim was not filed in accordance with the provisions of the 1938 contract, which stipulates that all claims must be filed within ten days after the return of the expedition, we believe it to be to the best interests of your organization and ours that the claim be adjusted. Accordingly, upon recept of advice from you that you will write the company a letter stating that all claims of whatever nature have been satisfactorily

settled upon our payment of 50% of this claim, of $25.20, we will hand you our check in the above amount.

We trust that it will be agreeable to you to accept this offer on our part and distribute the funds to the forty-two men involved in this claim. We await your advice in connection with this.

For your information, we enclose herewith copy of your letter of November 8, 1938.

Very truly yours,
ALASKA SALMON CO.
H. A. FLEAGER (Signed)

Enc.
HAF:EJ [13]

CLAIMANTS EXHIBIT NO. 2a

WOOD RIVER PERSONELL OF 1939 SEASON

1. Albert Sanchez
2. Albert Enger
3. Angel Rodriguez
4. Andrew Pena
5. Bernardino Olmos
6. Borge Therkelsen
7. Bill Murrish
8. Ceferino Miranda
9. Claudio Vallva
10. Clarence Wilson
11. Chris Avendane
12. Charles Nosaka
13. Charles Lucero

Wood River Personnel—(Continued)

14. Charles Rothweiler
15. Doningo Fahardo
16. Doningo Gonsalez
17. Frank Andrews
18. Francisco Echeverria
19. Francisco Gomez
20. Francisco Villa
21. Florencio Correa
22. Gregorio Rodriguez
23. Gaudin Bulangis
24. Henry Gutman
25. James Torres
26. Joseph Conway
27. Junius George Saore
28. Joe Ferniz
29. Jose Almaeda
30. Jimmy Kubo
31. Luther Smith
32. Manuel Rodriguez
33. Manuel Loscano
34. Mike Martin
35. Margarito Gonsalez
36. Malcolm Ryder
37. Natividad Medina
38. Roumaldo Spanol
39. Ramon Losada
40. Santiago Kaling
41. Sidney Wilson
42. Theodoro Martinez
43. Ushigico Uyeda
44. Vecinte Rodriguez

Wood River Personnel—(Continued)

45. Vincecio Milicich
46. Wilbur Wellman

Alaska Salmon Personnel—(Continued)

206. William Rooney
207. Frank Perez
208. Ricardo Canacho
209. Hassan Sugar
210. William Erickson
211. John Lozano
212. Marion Washington
213. E. Custodio
214. J. Abigano
215. Frank Nieve
216. J. Perla
217. W. S. Wilund
218. F. Lucas
219. N. Reyes
220. J. Delgadillo
221. P. Guzman
222. A. Orta
223. G. Solbakken
224. G. Santiago
225. D. Katanghal [14]
226. Bob Santos
227. E. Ramirez
228. V. Marston
229. L. Ferris
230. J. Varela
231. F. Jurado
232. T. Nichols
233. L. Marston

Alaska Salmon Personnel—(Continued)

234. E. Gonzales
235. L. Lapian
236. R. Campus
237. A. Brisbane
238. P. Elustre
239. Stephen Glumaz
240. Harry Canty
241. Archie McLaxtey
242. Charles Carroll
243. John Williams
244. Paul Johnson
245. Richard Throll
246. Bernardino Leyo
247. Thomas Miller
248. Richard Perinoni
249. P. Rivera
250. Carlos Santiago

105. Salvatore Garcia
106. Ow Chun
107. Joe Rendon
108. Francisco Barreras
109. Antonio Licalsi
110. Aurelio Ped
111. Manuel Rodriguez
112. Nemesia Rojo
113. Geronimo Ibarra
114. Milton Hachey
115. Macino Salas
116. Jack Lopez
117. James Alexander

Alaska Salmon Personnel—(Continued)

118. Carlos Ruiz
119. Calixto Basallo
120. Pat Adams
121. Thomas McGuire
122. Albert Nerva
123. Edward Morales
124. E. M. Cadasas
125. Virgilio Ruiz
126. John Pacheco
127. Chan Lun
128. Dewey Loftus
129. Anthony Lundin
130. Bedasto Kaminade
131. Manuel Molix
132. John Harris
133. Cecilio Figueroa
134. Edward Matos
135. Rafael Juncas
136. Charles G. Fondeca
137. Nufo Caravantes
138. Fernando Feliciano
139. V. Bello
140. M. Patino
141. Ernest Lam
142. Daniel R. Pillar
143. Tibercio Vios
144. Charles Bush
145. Joseph Publete
146. Teofilo Salom
147. Ezekial Ort[illegible]
148. Marcello Berzosa

Alaska Salmon Personnel—(Continued)

149. Andres Gonsalex
150. Louis W. Warner
151. Wilburn Burton
152. See Hock Chin
153. Felix Torres
154. Cirilo Gamboa
155. Andrian Santos
156. Richard Birch
157. Albert Molinar
158. William Weller
159. Raymond Angkahan
160. Knut Emanuelson
161. W. L. Fruit
162. A. Ve Lane
163. Addison S. Keeler
164. Henry Barrie
165. Lasina King
166. D. Paraohao
167. L. Acedira
168. E. Doria
169. Pete Morales
170. Toy Ping
171. Alfonso Orozo
172. Jesus L. Gonzales
173. George Sato
174. Yoshio Azuma
175. Thomas Ruesch
176. Ching Chong
177. Pete Garcia
178. A. Armenta
179. Mauro Garcia

Alaska Salmon Personnel—(Continued)

180. Charles Taime
181. Aurelio Madrid
182. George Canete
183. Felix Adonis
184. William Best
185. Felix Abargan
186. John Papov
187. Alfredo Ruiz
188. H. Medina
189. Fernando Palencia
190. Max Whittaker
191. Firmen Bilbao
192. John Melnikoff
193. Mario Fontanella
194. Hermenigeldo Lompot
195. Victor Fidalgo
196. Armando Resurrection
197. Eugenio Sarmiento
198. J. Collondres
199. Ignacio Castaneda
200. Philip Dagdagan
201. K. Oliva
202. Antonio Rivera [15]
203. Gabino Sato
204. George Steward
205. Morris Fishman

ALASKA SALMON COMPANY PERSONNEL OF 1939 SEASON

1. Vincente Rendon
2. Harry Hirose
3. Albert Soo Hoo

Alaska Salmon Personnel—(Continued)

4. Carlos Ross
5. Ramon Becerra
6. Liberio Morejon
7. Camilo Coslero
8. Pedro Prats
9. Alex Santana
10. Lociis Luazagna
11. John Molicillo
12. Memesio Garay
13. Juan de Jesus
14. Julian Vargas
15. John Gotty
16. Hilarion Ramos
17. John Marin
18. Regino Llamas
19. Frank Gongales
20. Jesus Burciaga
21. Henry Pedro
22. Francisco Calvo
23. Julian Orleans
24. Manuel Vargas
25. Samuel Rodriguez
26. Raymond Ojeda
27. William Larson
28. Robert Alverque
29. Clyde Meadows
30. Joe Cross
31. Turner Henderson
32. John Vallejos
33. Mike Ibanez
34. Stephen Medina

Alaska Salmon Personnel—(Continued)

35. John Boknight
36. Edward Vences
37. Juan Santisteban
38. Karl Orth
39. E. Yanca
40. Manuel Maymuni
41. Frank Kehr
42. Joe Escoto
43. Don Stotle
44. Alvin Faurot
45. Jaime De Jesus
46. Alex Rodriguez
47. Nariano Ferman
48. Hedley Jones
49. Pete Real
50. William Glassman
51. Trini Zepeda
52. Emilio Romos
53. Chalres Hurst
54. Frank Aranguera
55. Jose Barajas
56. Jesus Perez
57. Victor Antonio
58. Candido Santander
59. Shigeto Yamamoto
60. M. B. Rendon
61. Ambrocio Guillermo
62. Frank Guillen
63. William Rivera
64. Domingo Ponce
65. Joe Mendez

Alaska Salmon Personnel—(Continued)

66. Joe Gonzales
67. Edward Romero
68. Mack Rabunal
69. Robert Samayoa
70. Walter Molina
71. Federico Rivera
72. Bernardo Spaulding
73. John Santiago
74. John Dommguez
75. Richard Camplis
76. Frank Ascencio
77. Frank Torres
78. Temistocles Alcaide
79. Vidal Rivera
80. Simean Noal
81. Henry Ramos
82. Edward McNelis
83. Peter Sanchez
84. John Rosa
85. Andrew Ramirez
86. Joseph Tapia
87. Julia Rivera
88. Howard Lyon
89. Max Tominez
90. Jose Galeano
91. John Figeroa
92. Glasten Fosten
93. Edward Ford
94. Frank Luna
95. Jose Arellano
96. Stan Dahlberg

Alaska Salmon Personnel—(Continued)

97. Jessie Gonzales
98. Paul Gonzales
99. Vicent Face
100. Pedro Vasquez
101. Anacleto Ingresso
102. John Morana
103. Hong Wong
104. Merced Ayon [16]

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* * * 10:00 A.M., June 17, 1940, the hearing was convened by Referee Henry Roden * * *

Referee Henry Roden: Well, Gentlemen, it is now 10 o'clock.

First of all I would like to know who is represented at this hearing by counsel?

(Remarks were made off the record.)

Mr. Madison: I would like to move we have a continuance until one o'clock.

Referee Henry Roden: Then, Gentlemen, I guess we had better adjourn until one o'clock.

The Attorney for the Alaska Cannery Workers Union apparently can not be here much before that time; so, we will meet here at one o'clock sharp. There will be no further continuance at that time, though.

(At 10:30 A.M. the hearing was adjourned to reconvene at 1:00 P.M. in the afternoon.)

* * * * * *

* * At 1:00 p.m., June 17, 1940, the hearing was reconvened by Referee Henry Roden * * *

Referee Henry Rodin: Gentlemen, the hearing will now come to order.

Now, the record will show that the Alaska Cannery Workers Union is represented by Messrs. Andersen and Resner. I will call again, now, to ascertain if any other union is represented here.

Alaska Fishermen's Union?

Mr. Resner: I thought the only thing in issue here were the claims of the Alaska Cannery Workers Union?

Referee Henry Roden: That is what I understand, but I was informed by the office that the Bay Area District Counsel No. 2?

Mr. Resner: Yes—are interested in these proceedings. And so are the Alaska Fishermens Union as to any information.

Referee Henry Roden: But there is nobody particularly representing them now?

Mr. Resner: Let us pass that for the time being. The Secretary of the District Counsel will be here shortly and we will determine whether or not they want to formally appear [17]

Referee Roden: Then at the present time the proceeding is on behalf of the Alaska Cannery Workers Union.

Mr. Madison: Do I understand Counsel to say the only matter before us at this time is the appeal on behalf of the Alaska Cannery Workers Union?

Referee Roden: That is the way I understand it.

Mr. Resner: In the first place, before we get into that, I want the record to show at this morning's hearing I was detained in the Criminal Courts

down town and the Secretary of the Union so notified the Commission and asked for a few minutes for me to get here, and I understand this continuance or delay or adjournment was then made on the motion of the operators.

I want to say that criminal matters had precedence and I had to appear there; and, therefore, that explains my lateness this morning.

Now, with regard to these claims, as I understand your law the members of Local No. 5 of the Alaska Cannery Workers Union filed claims for unemployment benefits, and these claims were rejected and each man was given a notice to the effect it was rejected because there was a labor dispute.

Now, your law requires that an initial determination shall be made there was a labor dispute. Now, we don't have any information or knowledge as to how that original determination was made and on what basis it was made; and that is one thing we would like to get an answer to if possible at this time?

Referee Roden: I don't know, myself, how it was made. I am not a member of the Commission and I have no knowledge or information as to what the Commission has done except that the claims were rejected on account of the existence of a labor dispute.

Mr. Resner: That is just the point. Of course, we contend there isn't any labor dispute within the meaning of the Act, and we are at a loss to understand as to how that could have occurred. Apparently the provisions of the Act weren't followed in this regard.

Referee Roden: What we are interested in at the present time, Mr. Resner, is to take some evidence establishing the fact no labor dispute existed so far as you are concerned.

Mr. Resner: That seems to put the burden upon us to establish the fact there isn't a labor dispute.

[18]

Referee Roden: Do you want to put in any evidence? Proceed then.

Mr. Resner: I think before we should proceed we should have some knowledge as to here we stand. Section B of your Act requires for an initial determination and, apparently, those provisions of the Act have not been followed.

Referee Roden: In what respect?

Mr. Resner: In this way—that no initial determination—apparently, an initial determination has been made by the Commission that a labor dispute exists without hearing a word at all from this union on the subject.

Referee Roden: All right. The decision has been made by the Commission, has it not?

Mr. Resner: Yes. We want to know on what basis that decision was made?

Referee Roden: That is immaterial now. They tell you on what basis their decision was made. It was on the basis of a labor dispute.

Mr. Resner: We want to know how they arrived at their conclusion.

Referee Roden: We are now here to take evidence covering that every issue.

Mr. Resner: Well, our objection is noted. In any event, we contend the provisions of this Act

were not followed according to the procedure provided by this Act in determining whether or not this was a labor dispute.

Before we proceed there are some things I want to get clear further, and that is whether we are required to put in the names of all the Claimants or whether those Claimants who have already filed their claims will be considered as having whatever there is decided here apply to them?

Referee Roden: I understand that is the case.

Mr. Resner: In other words, it won't be necessary for us to come forward and give the names of the Claimants. They are already on file with the Commission.

Referee Roden: Yes.

Mr. Resner: Well, I want to make a brief statement first as to what our position is. [19]

In the first place, we are contending this is not a labor dispute but simply a refusal on the part of the Alaska Packers to negotiate an agreement with the Union for the present season in Alaska affecting the Alaska Cannery Workers, Local No. 5, of San Francisco, and that is not a labor dispute; and, therefore, these men are just out of work because of the refusal to enter into this agreement and are entitled to their benefits.

We want to contend, secondly, if under any circumstances this can be considered a labor dispute it is not such labor dispute within the meaning of the Act for these reasons: This is a seasonal industry and the contracts heretofore have been signed for one year—have been negotiated and signed

anew for each season. The contract of last year had expired and a new contract was to be signed for or negotiated for the coming season. There was no contract arrived at. And we contend the failure or the inability to arrive at a contract does not constitute a labor dispute.

Third, going to the Act, itself, referring to Section 5(d), we contend this is not a labor dispute which is in active progress at the factory establishment or other premises at which the workers were last employed.

And then we contend, further, these particular Claimants and the members of this union, under Section 5(d) subsection 2, do not belong to a grade or class of workers which immediately before the commencement of the dispute there were members employed at the premises of which this dispute occurs, any of whom were participating in or directly interested in the dispute. In other words, there was no employment relationship existing which was terminated. And we contend what this Act applies to and only what it applies to is a strike situation where the union may make demands in excess of what they have already and are not met and, therefore, they strike.

We contend this situation isn't a labor dispute at all under that construction of the Act.

Now, there are some workers I don't think there should be any controversy about at all. There are some three hundred Claimants and members of the union who worked last year and have worked for the Alaska Salmon Company. That Company did

not intend to operate under any circumstances this season, and I don't think there should be any question about that. [20]

I want to know if the attorney, whoever it is represents the Alaska Salmon Company, differs with that statement?

Mr. William Oliver: I represent the Alaska Salmon Company. I am not prepared now to make any statement as to whether or not we claim that we come under the labor dispute or that we do not. I have had and my client has received no notice of any claims having been filed against or with respect to it by anyone or the basis of the claim or what determination has been made, if any. It has been given no reasons for the basis of any determination. It has received no reasonable notice of this hearing or any other hearing. It has been denied notice and rights accorded to it under the Statute, and the lack of notice constitutes a violation of due process of law.

Under the circumstances, I think any statement that I will give will have to depend upon what I might learn here. Also, I want to register the objections on the grounds I have already stated.

Referee Roden: You say three hundred claims have been filed?

Mr. Resner: Yes, three hundred claims of workers, members of this union, who last year worked for the Alaska Salmon Company. Now, we contend the Alaska Salmon Company did not intend to operate at all this year. In other words, they didn't intend to operate no matter what happened, and

there couldn't possibly be a labor dispute with the employes of the Alaska Salmon Company plants.

Referee Roden: What evidence have you to show they did not intend to operate?

Mr. Resner: Well, I have a letter here from the Alaska Salmon Company to that effect.

Referee Roden: Will you please file that?

Mr. Resner: I would like to read it and then I will file it. (Indicating).

Mr. Madison: I think at this time it would be well for me to say I am representing the Alaska Packers Association and Red Salmon Canning Company. That we have had no notice as to the extent or purpose of this hearing other than, that is, to give evidence under the question of this labor dispute. We understand Counsel for the moving party in this case, the union, intends to confine the issued of this case to the question as to whether or not a labor dispute has existed. [21] And if this is an appeal, as we understand from the one telegram we have received, then we have had no notice of appeal as provided in the Act.

And I simply want to make those matters a matter of record and voice my objection or objections to them so that I won't be deemed in proceeding with the hearing to waive any rights we may have in the premises.

Mr. Resner: That is why, Mr. Referee, I asked the question which I did at the outset trying to determine just what the status of the parties is? If you could give us that information it will be helpful?

Referee Roden: I will give you all the information I have. I don't know very much about it, myself. I happened to be in Seattle. Our Commission wired me at Seattle asking me if I could come down here and take the testimony upon this appeal, in which the question of a labor dispute was involved. That the Commission had turned down or rejected the claims filed by your clients because it came to the conclusion that a labor dispute existed.

That is all I know about it.

Mr. Resner: Thank you very much. Of course, we have already noted our objection, that the initial determination is not made according to the Statute.

Referee Roden: In what respect are you damaged?

Mr. Resner: Well, except that it puts the burden of proof upon us.

Referee Roden: Not necessarily so. That is a matter that will be decided later on. But somebody will have to commence here.

Let me ask, Mr. Madison, in what respect are you damaged if we proceed now and do not continue this hearing?

Mr. Madison: I don't know that I am damaged in any respect. It would depend entirely upon how the matter proceeds. I am perfectly willing to proceed at this time, so long as it is understood we are waiving no rights we may have to object later on.

Mr. Resner: Well, it is understood we are not.

Mr. Oliver: I am perfectly willing, too, on that same basis.

Referee Roden: Fine. We will give you Gentlemen all the opportunity you want to present your case. That is what we are here for. [22]

Mr. Resner: I would like first to have you note those Claimants who are or were last year employes of Red Salmon. I would like to have their names read into the record.

Referee Roden: Have you a list of them?

Mr. Resner: Yes. If we can file it later on?

Referee Roden: Is there any contention on the part of the Alaska Salmon Company that these three hundred people had no connections or had any connections with your Company? (Indicating)

Mr. Oliver: I don't know who the three hundred people are. I have had no opportunity to examine the register.

Referee Roden: If you get a list of them will you be kind enough to check them as soon as you can?

Mr. Resner: You will check the list against your payroll?

Mr. Oliver: Yes.

Mr. Resner: Well, with regard to these, we have these lists but they are not in proper form. We are going to have lists prepared and I will file them later on.

Referee Roden: Yes.

Mr. Resner: The letter is from the Alaska Salmon Company to Local No. 5, Alaska Cannery Workers Union, dated April 30, 1940.

Attention: Mr. Rendon.

"Dear Mr. Rendon:

"As your organization has been advised by the Alaska Salmon Industry, Inc., this company cannot make any expedition to Alaska out of San Francisco this season and accordingly will not have employment, or be able to ship any men on our steamers to our various canneries this year."

There are other portions of the letter which are not relevant. This is the only copy which we have. I would like to offer it for the record.

Mr. Madison: That was sent and received on the date it bears, was it not?

Mr. Resner: I can't say as to that. Approximately then, I suppose. The only date I have is one the letter bears, April 30, 1940.

Mr. Madison: If the letter is to be introduced in evidence I would like to know if it was sent and received the time the letter shows? [23]

Mr. Resner: Approximately the time it shows the letter was received.

Mr. Madison: Within a day or so? Sent in San Francisco and received in San Francisco?

Mr. Resner: That is right.

Mr. Resner: On April 26th the letter was received from the Alaska Salmon Industry to All the Unions Concerned, part of which reads as follows: "The Alaska Salmon Company will not undertake any expeditions out of San Francisco to Bristol Bay in 1940."

That letter is signed by J. Paul St. Sure for the

Alaska Salmon Industry, Inc. That is the only portion. I would like to offer this letter (Indicating)

Referee Roden: Will you explain, Mr. Resner, who composes the Alaska Salmon Industry?

Mr. Resner: The Alaska Salmon Industry is composed of the Alaska Packers, Red Salmon Company, and the Alaska Salmon Company, I think, these gentlemen. (Indicating)

Mr. J. Paul St. Sure: Insofar as San Francisco is concerned the three operators in San Francisco are the three named by Mr. Resner. Alaska Salmon likewise comprises packers out of Portland, Seattle, and San Francisco.

Mr. Resner: Does the Commission desire to have the Officer of the Union who received these letters testify as to their receipt?

Referee Roden: Anybody object to admitting them in evidence?

Mr. Madison: No.

Mr. Resner: Then I don't think it is necessary.

Mr. Madison: No objection.

Mr. Resner: I want to turn now to the question of our contention there is not a labor dispute in active progress within the meaning of the Act, or any labor dispute at all because of the inability to arrive at an agreement.

I want to call as a witness Mr. Vincent Rendon.

MR. VINCENT RENDON,

1447 O'Farrell Street, San Francisco, being duly sworn testified as follows:

Direct Examination

By Mr. Resner: [24]

Q. Will you give us your name and address, please?

A. Vincent Rendon, 1447 O'Farrell Street, San Francisco.

Q. You are a member of Local No. 5, Alaska Cannery Workers Union?

A. Yes, Book No. 163.

Q. You were a member of the Negotiating Committee this year for San Francisco?

A. Yes.

Q. And also for Seattle? A. Yes.

Q. And how long have you been a member of the Union, Mr. Rendon?

A. Since 1936.

Q. You were on the Negotiating Committee last year?

A. Last year, and 1937, and 1936.

Q. Now, I want to direct your attention to the present Alaska season and ask you what the Union, Local No. 5, offered by way of a contract for the present season?

A. For the present season we gave them—that is in Seattle, March 6—to the Salmon Industry we give them our 1940 proposed contract; but Mr. Van Hoevenberg had refused to read our contract, and he was offering to us the 1939 of Seattle contract.

(Testimony of Vincent Rendon.)

By Referee Roden:

Q. He offered you the same terms as you had in 1939, did you say?

A. No, he offers the San Francisco Local the 1939 Seattle wages and conditions.

Q. He offered you the 1939 contract?

A. Yes, of Seattle.

By Mr. Resner:

Q. He offered the San Francisco Local, which is Local No. 5, the 1939 Seattle agreement?

A. Yes.

Mr. Resner: For the Referee's information I will state we will later show there is a difference between the 1939 Seattle agreement as applying to those shipping out of Seattle and the 1939 San Francisco agreement applying to the operations from San Francisco. And Mr. Rendon testifies the union in Seattle was offered by Mr. Van Hoevenberg, the San Francisco Local, was offered the 1939 Seattle agreement.

Is that correct, Mr. Rendon?

A. Yes. [25]

By Referee Roden:

Q. Who was that offered that? Mr. who?

A. Mr. Van Hoevenberg.

Q. Will you identify him?

A. Manager of the Canned Salmon Industry, Ellsworth, and Van Hoevenberg.

Q. That is Ellsworth? A. Ellsworth.

(Testimony of Vincent Rendon.)

By Mr. Resner:

Q. And the date of that was when?

A. March 7th.

Q. In Seattle? A. In Seattle.

Q. And were negotiations continued after that time?

A. The negotiations. It seems to me that the Canned Salmon Industry they don't have no faith to have any negotiations because sometimes during the two months they have negotiations there is only 18 times we meet; and mostly one hour and a half or two hours. That is the mostly that they can spare time to ask to talk.

Q. Let me bring this back, Mr. Rendon. You say the union presented its 1940 contract?

A. Yes.

Q. And what happened to that contract so far as the packers are concerned?

A. They refused to read it.

Q. Did they hand it back to you or keep it?

A. They keep it but say there is no use to talk to us this because we cannot pay.

Q. Did you have any negotiations on your proposals in the 1940 agreement?

A. They just tell us to come back the next day and then the minute we come back the next day they say they don't have no time. And one day we was there they says they cannot talk no contract at all because they are going to get married, some of their daughters, and we says, "We will call you sometime."

Q. Where did this take place?

(Testimony of Vincent Rendon.)

A. That takes place in Seattle. And since that, we was waiting for three weeks since that date.

Q. From that day three weeks passed?

A. Three weeks passed. And then they tell us again, they say, "Well, we can spare you for two hours."

Q. And then you had another meeting in Seattle at that time?

A. And on that day they told us that they cannot pay more than 1939 of Seattle.

Q. The most they could pay was the 1939 Seattle wage scale? A. Yes.

Q. And what did the union ask for?

A. We were asking for 1940 or the 1939 of San Francisco wages and conditions. [26]

Q. Did the union make a definite offer to the operators to sign for the 1939 San Francisco wage scales? A. Yes, that is on May 29th.

Q. May 29th? A. Yes.

Q. You offered to sign for the San Francisco wage scale? A. Yes.

Q. For the operation from San Francisco?

A. From San Francisco.

Q. And that offer was made to whom?

A. To to the Canned Salmon Industry.

Q. Which representatives?

A. That is, there are 74 companies represented by Mr. Van Hoevenberg and Ellsworth.

Q. And where did that meeting take place?

A. In Dexter building.

Q. Seattle? A. Seattle.

(Testimony of Vincent Rendon.)

Mr. Resner: I want to offer into evidence at this time the 1939 San Francisco agreement and the 1939 Seattle agreement.

I assume you gentlemen have got copies?

Mr. Madison: May I see them, please?

Mr. Resner: I only have the one copy of each. (Indicating)

There are certain portions of these agreements that I wanted to direct to the Commission's attention. I would like to note those at this time.

Mr. Madison: Are you offering those now?

Mr. Resner: We have no objection to those being introduced if we may have some opportunity of checking them during the day.

Mr. Resner: You want to check them for the purpose of comparison with your copies?

Mr. Madison: Yes.

Mr. Resner: That is all right, certainly.

CLAIMANTS' EXHIBIT No. 3-A

SEATTLE AGREEMENT

This Agreement, made and entered into between ....., a Corportion, for its ..... Cannery, the party of the first part hereinafter referred to as the "Company", and the United Cannery Agricultural, Packing & Allied Workers of America, C.I.O., in behalf of ..... Local No. ....., the part of the second part, and each and severally, it is agreed:

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

WITNESSETH:

1. The Company agrees to recognize the Union as the exclusive and sole bargaining agent of all its employees engaged for Alaskan Salmon Cannery operations from the States of California, Oregon and Washington, for the 1939 season in the capacities herein listed and commonly termed "Cannery Labor." The Company shall procure all employees not residents of Alaska who come under the jurisdiction of the Union, through the Union headquarters or the Union hiring halls.

2. The Company shall not discriminate against any member for any Union activities, race, color, or creed, or for a law-suit or any legal action instituted because of dispute of contract.

3. In the event those employees selected as herein provided are not members of the Union, they shall be issued an official permit by the Union. At the time of departure for Alaska, such employees shall be either members of the Union or have received an official permit from the Union.

3-A. The Union shall furnish qualified foremen acceptable to the Company.

3-B. The Company shall at its option designate its foreman and representative who is a member of the Industry and who has no connection directly or indirectly with any labor contracting agency, and they will work with the Union's representatives in lining up of crews, based on preference being given

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

to those on the 1938 payrolls of the Company's cannery who are members of the Union in good standing, or worked on permits during the 1938 season.

3-C. In the event that said members of the Union or 1938 permit men so selected cannot be produced, or for any reason, do not elect to sign up within twenty-four hours prior to scheduled departure for Alaska, the Union shall furnish the necessary experienced men willing to go, then the Union shall furnish employees from the waiting lists of the Union.

4. The employees selected shall comply with all lawful orders of the Company or its representatives, and with all Company rules not inconsistent with this agreement and agree to work for the Company in the capacity designated or in any other capacity that the Company may require of the employees to and from, and in connection with the Company's salmon cannery operations in Alaska, to which such employee is assigned. The Company shall have the privilege to reject individual men of the 1938 employees who are unsatisfactory to the Company.

5. Except for willful violation of this agreement there shall be no lockouts, strikes or stoppage of work during the period of this agreement by the Company, any employee, group of employees or the Union.

5-A. Any disputes that cannot be settled at the

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

cannery are to be adjusted and settled after the season at port of embarkation of the expedition.

5-B. It is hereby understood that making any payment does not release the Company from liability if such liability exists.

6. Members of the Union shall not refuse to go through a picket line, unless such picket line is officially authorized by a legitimate labor organization affiliated with the Maritime Federation of the Pacific and approved by ..... Local #....., UCAPAWA-CIO in ....., ..., and said Federation. Employees refusing to go through a jurisdictional picket line shall receive no pay or compensation while work is suspended.

7. The Company agrees to recognize one member of the crew of each cannery designated by the Union as the delegate or shop steward and agrees to pay such delegate $25.00 per month above Class "A" scale of wages.

7-A. The Union claims certain definite rights and benefits in behalf of its membership as outlined in this agreement, and these rights shall be upheld by the authorized delegate; who shall act as the representative and spokesman of the Union, and in the event of a dispute or misunderstanding, he will be vested with the authority to settle to the best of his ability, all issues that may be brought to his attention. Further, a delegate is authorized and instructed that strict observance of all rules and

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

regulations, hours, wages and general conditions are to be observed. He shall endeavor at all times to settle all matters and issues in a satisfactory manner to all concerned.

8. It is expressly agreed that neither the Company nor its representatives, nor the Union or its representatives has the power or authority to change the provisions of this agreement.

9. The employees shall go on board any vessel designated by the Company when and where directed, and shall return to the port of embarkation upon any vessel designated by the Company when and where directed, unless the employee does not desire to return to the port of embarkation as directed, in which event the Company shall be relieved of all obligations to the employee for return transportation.

10. It is understood and agreed that before embarking, all employees shall submit at such time and place as the Company may designate, to a physical examination by a qualified physician, including those members requiring special certificates as food handlers, etc., no costs in connection with the examination and certificates shall be borne by the Union or its members.

10-A. Any employee covered by this agreement, who from injury sustained while at work for the Company through no fault of his own is prevented from working according to the judgment of a physician, is to continue to receive his respective pay

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

according to the agreement during the period of the injury; provided, however, that in the event the injury to any employee comes within the purview of the Workmen's Compensation Act for the Territory of Alaska, or any other compensation act, territorial, federal or state, the employee will receive the benefits specified in such applicable compensation act, and in addition thereto, such amount as will equal the difference between the compensation paid and the pay of such employee according to this agreement. Provided, further, that if the disability continues beyond the termination of the season, he shall receive thereafter only the amount to which he would be entitled under the Workmen's Compensation Act for the Territory of Alaska or any other compensation act applicable to his employment. The employee if and when injured shall report such injuries to the foreman in charge immediately at the time of the injury. Any such employee shall be entitled to medical and surgical attention and necessities without cost, in accordance with the requirements of the Workmen's Compensation Act for the Territory of Alaska or any other compensation act applicable to his employment.

10-B. Any employee covered by this agreement who is laid up because of sickness or natural ailments or an injury sustained outside the scope of his employment, and who is unable to work according to the judgment of a physician, shall be

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

paid his monthly wages and all other earnings up to the date so laid up, and shall thereafter be paid only the sum of $50.00 per month from the date so laid up until able to work, or until placed in a hospital, or until transported to a place where hospital facilities are available, at which time the Company's liability shall cease. It shall be, however, the thorough understanding that in the case of sickness, or natural ailments, or an injury sustained outside the scope of his employment that the Company will not be liable for wages after the date the majority of the employees of such cannery have arrived at the port of embarkation. In the event of a dispute, the Superintendent will also make an effort to secure the opinion of another qualified physician. All employees so laid up through sickness, or natural ailments while engaged under this contract, shall receive medical and surgical attention and necessities without charge so long as they shall be entitled to payment of the $50.00 per month under the terms of this section. This does not apply in cases of proven or obvious veneral diseases, intoxication, brawls or fights.

11. Medical, Dental and surgical services shall be furnished by the Company free of charge. Dental service shall consist of extractions and the treatment of infections resulting from said extractions.

11-A. In case of serious illness or accident, where no competent hospitalization or suitable

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

medical attention is immediately available, every feasible effort shall be used by the Company to transport the men to the nearest hospital.

12. Unless expedition is abandoned, any man who has been selected by the Company, has signed the Company's agreement and been accepted by the Company, and is discharged before leaving port of embarkation, unless so discharged for physical disability, drunkenness or any other legitimate cause, shall be paid $75.00 as full compensation, said compensation to be paid within forty-eight (48) hours after such discharge.

13 If members are hired for a long job such as construction or purposes other than cannery work, the Company shall notify the Union before sailing.

14. School, Poll, Social Security and other taxes assessed against employees and payment of compensation insurance or hospitalization authorized by any Federal, State or Territorial law, shall be deducted by the employer from any wages due and the employer shall withhold any payments when required to do so by writ of garnishment or other legal proceedings or by valid assignments. Before acceptance the Company shall verify assignments with the individual employee.

14-B. Upon the discharge of any employee for just cause his wages shall terminate immediately and such employees should be housed and fed and returned to port of original embarkation.

14-C. In the event any employee refuses duty

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

or voluntarily quits his employment, his wages shall cease immediately and there shall be deducted from wages due him all costs of transportation North and South bound at prevailing passenger rates together with costs incurred by such employee at the cannery while waiting passage outbound from the cannery.

15. The Company guarantees each employee covered by this agreement hired outside the Territory of Alaska not less than two months' wages in accordance with the position as per classification, unless employee should be discharged or quits as herein provided.

16. On days of arrival or departure the hour 12 midnight shall be considered as the basis for the computation of the payroll. On days of arrival or departure one full day shall be paid irrespective or exact time of arrival or departure with regards to the hour of 12 midnight. Wages shall commence on the day of departure and terminate on the day of return to the port of dispatching, except as herein otherwise provided.

In the event that any employee does not elect to return to original port of embarkation upon a suitable vessel by and at the direction of the Company at the termination of the season, his employment shall be considered terminated and he shall be paid all wages due him within forty-eight (48) hours, subject to all provisions of this agreement, in which

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

event the Company will be relieved of all obligations to the employee for return transportation.

17. The Company shall extend credit or make cash advances of a minimum of $25.00 upon request as soon as practical after physical examination of employee with the written consent of the employee and the Union. Such advances however, shall not exceed twenty percent (20%) of the employee's estimated earnings for the period of employment, and such advances are to be refunded to the Company by the Union in case the employee does not arrive at the cannery to which the employee was dispatched by the Union. In addition thereto, the Company may at its option honor written allotments as earned by the employee for the benefit of his family or dependants. The Company may also allow credit to an employee for purchases made in Alaska at the Company's commissary against wages earned, but not in excess of 50% of the total season's wages may be deducted for such purchases. All articles displayed for sale to members of the Union shall be Union-made where available. The Company shall be entitled to deduct all such credits, cash advances and allotments paid before making any final payment to the employee. The Company shall not knowingly deduct from any wages due any amount for gambling debts incurred by the employee, or for narcotics, drugs, intoxicating liquor, or any employment fee, direct or indirect.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

18. It is agreed and provided that the sum of $10.00 shall be made available to each employee, if due, not later than the day of arrival in home port and further provided that the Company shall pay directly to all employees all earnings due within forty-eight hours after arrival, holidays and Sundays excepted. Failure on the part of the Company to meet this requirement shall constitute a just claim by the employees to an additional prorata monthly or seasonal wage rate for each day of delay, including subsistence at $3.00 per day.

19. If for the principal part of the actual canning season, an employee is assigned to an operation carrying with it a higher rate of wage than that for which he originally signed up, such higher rate of wage shall apply to his entire employment under this contract. If the Company shall within ten (10) days after the commencement of canning operations, determine that employee fails to properly perform the work for which signed up and shall assign such employee to a position carrying with it a lower rate of wage, such lower rate of wage shall apply only from time of demotion, and an appropriate adjustment shall be made accordingly when employee is paid off.

Members or workers signed for a definite classification and wage scale on embarkation, shall not be paid at any lower rate if they are required to perform general work before, after, or during the

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

actual canning season, except as otherwise provided herein.

20. The Company shall furnish transportation from dispatching hall to North bound steamer's dock when employees sail in groups of ten men or more. On return if landed at a City other than that from which dispatched, then transportation shall be made available to the City from which dispatched. The Company shall also furnish employee free transportation, third-class, from point of embarkation to cannery and return, except as herein otherwise provided; three wholesome and adequate meals each day during transportation and while at the cannery; also suitable living quarters while at the cannery and bunk, spring and mattress, but employee shall furnish all his other bedding, clothing and personal effects, and excepting for its own negligence, the Company shall not be responsible for any damage to, or loss of, any of employee's bedding, clothing or personal effects from any cause whatsoever.

21. The Company agrees to provide a phonograph and forty-eight (48) assorted records for use at the cannery by employees covered by this agreement.

22. Employees whose work is such that it has been the custom to necessitate the use of oil skins, oil skin aprons, boots, sleeve guard or gloves, shall be supplied free of charge with these necessities. Lye wash and Retort men are to be supplied with

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

leather palm gloves. Such equipment shall be returned to the Company at the Superintendent's discretion. Rubber boots and other equipment referred to above shall be kept hygienic and sanitary by employees using same..

23. No employee shall be required to work where hazardous or unsafe conditions exist.

24. A suitable number of fire extinguishers shall be placed at strategic points in cannery plants.

25. Cooks required by the Company to make vessels shipshape, check vessel supplies, or prepare meals before ship sails for cannery, shall be paid for each day and hour at the regular per day rate, but not less than four (4) hours shall be paid whether the work lasts that long or not.

26. Required number of supervisory personnel.

Canneries employing less than 60 men, 1 First Foreman.

Canneries employing 60 men or more, 1 First Foreman & 2nd Foreman.

27. All time worked in excess of the hours herein provided shall be paid at the regular overtime rate for cannery work.

27-A. Forty-eight (48) hours of work shall constiute a week's work, except mess house crew. If the forty-eight (48) hours have not been worked during the week, they shall not be required to make it up in the succeeding week.

27-B. Before and after the actual canning season Sunday shall be the recognized day of rest each

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

week. During the actual canning season Monday shall be deemed the day of rest in addition to all recognized holidays and all work performed on these days shall be paid at the applicable extra compensation rate agreed herein.

28. The following rates of compensation shall apply in the respective classifications of employment and districts.

BRISTOL BAY

Foremen	1st Foreman	2nd Foreman
1 and 2 line canneries	$975.00 per season	$625.00
3 line canneries	1025.00 " "	650.00
4 line canneries	1075.00 " "	675.00
5 line canneries	1125.00 " "	700.00

For each additional line over 5 lines, first foremen shall receive $50.00 additional and second foremen $25.00 additional per line.

First and second foremen shall not be entitled to any overtime pay.

Cooks	
First Cook for Cannery Workers	
Regularly serving over 60 men	$177.50 per month
Regularly serving from 30 to 60 men	157.50 " "
Regularly serving less than 30 men	142.50 " "
Second Cook (If employed)	137.50 " "
Kitchen Help, Waiters & Dishwashers	97.50 " "
Bull Cook (where more than 40 cannery workers employed)	97.50 " "

Baker (If employed) $25.00 less than respective First Cook.

The mess house crew shall prepare and serve the three regular meals each day. During the canning season if coffee is served at other than regular

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

meal hours, the mess house crew shall prepare same without overtime. If at midnight, the Cook is required to prepare and serve an additional full hot meal for members of the crew working at night, he shall receive three (3) hours' overtime. If coffee is served at 9 P. M. for men working in the cannery up to 9 P. M. or later, one hour overtime shall be allowed to not more than two men from the mess house crew. These two men to be designated by the head man of the mess house crew. Where it does not interfere with the operation of the cannery, the mess house may arrange amongst themselves for one day off in each seven days.

Cannery Workers

Classification "A"	$100.00
Classification "B"	90.00

For cannery workers eight (8) hours from 8 A. M. to 5 P. M., shall constitute a day's work before and after the canning season. During the canning season eight (8) hours shall constitute a day's work in a spread of nine (9) hours starting from 7 A. M., but not later than 8 A. M. It is understood that the foreman shall make necessary adjustment in working time between those hours for any crew in case such crew, on the foremen's order starts working after 7 A. M. The working time for any crew to be eight hours from start of work before entitled to overtime. Overtime will be paid at the rate of sixty-five cents (65c) per hour.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

Longshore work shall be paid for at the rate of $1.00 per hour.

Head Lye Wash, Head Butcher and Head Warehouseman (if used) $125.00.

FOR WESTWARD ALASKA OR COOK INLET DISTRICTS AND CHIGNIK, KARLUK AND ALITAK CANNERIES

Foremen	1st Foreman per season	2nd Foreman per season (If employed)
Canneries with 1 line (except in canneries where not customarily used)	$925.00	$575.00
Canneries with 2 lines	975.00	600.00
Canneries with 3 lines	1000.00	625.00
Canneries with 4 lines	1050.00	650.00
Canneries with 5 lines	1100.00	675.00

First and Second Foreman shall not be entitled to overtime pay.

Cooks

First Cook for Cannery Workers	
Regularly serving more than 60 men	$175.00 per mo.
Regularly serving from 30 to 60 men	155.00 " "
Regularly serving less than 30 men	140.00 " "
Second Cook (If employed)	130.00 " "
Kitchen Help, Waiters & Dishwashers	95.00 " "
Bull Cook (where more than 40 cannery workers employed)	95.00 " "

Baker (If employed) $25.00 less than respective First Cook.

The mess house crew shall prepare and serve the three regular meals each day. During the canning season if coffee is served at other than regular meal hours, the mess house crew shall prepare same without overtime. If at midnight. the cook is required to prepare and serve an additional full hot meal for members of the crew working at night,

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

he shall receive three (3) hours' overtime. If coffee is served at 9 P. M. for men working in the cannery up to 9 P. M. or later, one hour overtime shall be allowed to not more than two men from the mess house crew. These two men to be designated by the head man of the mess house crew. Where it does not interfere with the operation of the cannery, the mess house crew may arrange amongst themselves for one day off in each seven days.

Cannery Workers	
Classification "A"	$93.00 per month
Classification "B"	85.00 per month

For cannery workers eight (8) hours from 8 A. M. to 5 P. M., shall constitute a day's work before and after the canning season. During the canning season eight (8) hours shall constitute a day's work in a spread of nine (9) hours starting from 7 A. M, but not later than 8 A. M. It is understood that the foreman shall make necessary adjustment in working time between those hours for any crew in case such crew, on the foreman's order starts working after 7 A. M. The working time for any crew to be eight (8) hours from start of work before entitled to overtime. Overtime will be paid at the rate of sixty-two and one-half cents (62½c) per hour.

Longshore work shall be paid for at the rate of eighty cents (80c) per hour.

Head Lye Wash, Head Butcher and Head Warehouseman (If used) $120.00.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

BALANCE OF KODIAK ISLAND, COPPER RIVER & PRINCE WILLIAM SOUND AND SOUTHEASTERN ALASKA.

Foreman	1st Foreman per season	2nd Foreman per season (If employed)
Canneries with 1 line (except in canneries where not customarily used)	$875.00	$500.00
Canneries with 2 lines	950.00	600.00
Canneries with 3 lines or more	1100.00	625.00

First and Second Foremen shall not be entitled to overtime pay.

Cooks

First Cook for Cannery Workers		
Regularly serving more than 60 men	$160.00	per month
Regularly serving from 30 to 60 men	145.00	" "
Regularly serving less than 30 men	135.00	" "
Second Cook (If employed)	125.00	" "
Kitchen Help, Waiters & Dishwashers	95.00	" "
Bull Cook (Where more than 40 cannery workers employed)	95.00	" "

Baker (If employed) $25.00 less than respective First Cook.

The mess house crew shall prepare and serve the three regular meals each day. During the canning season if coffee is served at other than regular meal hours, the mess house crew shall prepare same without overtime. If at midnight, the cook is required to prepare and serve an additional full hot meal for members of the crew working at night, he shall receive three (3) hours' overtime. Where it does not interfere with the operation of the cannery, the mess house crew may arrange amongst themselves for one day off in each seven days.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

Cannery Workers

Classification "A"	$90.00 per month
Classification "B"	$80.00 per month

For cannery workers eight (8) hours from 8 A. M. to 5 P. M. shall constitute a day's work before and after the canning season. During the canning season eight (8) hours shall constitute a day's work in a spread of nine (9) hours starting from 7 A. M., but not later than 8 A. M. It is understood that the foreman shall make necessary adjustments in working time between those hours for any crew in case such crew, on the foreman's order starts work after 7 A. M. The working time for any crew to be eight (8) hours from start of work before entitled to overtime. Overtime will be paid at the rate of sixty cents (60¢) per hour.

Longshore work shall be paid for at the rate of eighty cents (80¢) per hour.

Head Lye Wash, Head Butcher and Head Warehouseman (if used) $115.00.

29. The following cannery workers classification and capacities are those referred to in Section 28. In the event any classification is not specified or is known by other names, or new classifications are to be added, wages, and benefits and the definite classifications shall be agreed upon and supplemented to this agreement and made retroactive to the leaving and return of expedition.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

A

Pitchers & Sluicers (where employed)
Scow Men, Hook Fish
Sorters
Fish House Bins
Elevator in Fish House
Filler Hopper Man
Hand Labeling Crew (where hired as such)
Men wiring and stitching boxes
Fish Inspector
Can Tester
Casing Machine Operator
Iron Chink Feeders & Butchers
Catching Cans on line by hand
Slimers
Gang Knives (where used)
Filler Feeders
Operator of Cooler Loader
Retort & Lye Wash Men
Men regularly supplying coolers to line
Labeling Machine Operator (where used permanently)
Wooden Box Maker & Nailer
Box Pilers (where hired as such

B

Men supplying coolers to line
Patching Table
Reform Feeder
Clincher, Vacuum Machine & Salter Men
Catching and Piling Cans & empty Boxes

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

Warehouse Crew
General Can Loft Work
Other General Cannery Work

30. All work involving the handling of cargo moving directly to a ship's tackle or scows from the last point of rest on the dock or in the warehouse or all cargo moving from the ship's tackle or scows to the first point of rest on the dock or in the warehouse, shall be considered longshore work and be paid for at the scale agreed herein.

31. Construction of buildings or appurtenances, razing of buildings or repair, ditch digging, clearing land, shall be classed as miscellaneous work and paid for at the rate of 75c per hour, regardless of the time such work is performed. All other work except longshore work, not specifically mentioned herein shall be performed during the regular work day without extra compensation.

32. When actual overtime worked is less than one-half hour, one-half hour shall be paid. When overtime exceeds one hour, payment will be allowed on actual time worked but not less than one-half hour periods.

33. In the event that the cannery is destroyed, or so greatly damaged from any cause or the laws, rules or regulations with reference to salmon fishing or canning be changed, or that in the Company's judgment, because of strikes or for any reason, it would be impossible or unprofitable to continue operations, the Company shall comply with

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

Section 15 and may terminate this agreement excepting that the Company shall return each employee covered by this agreement to the point where hired at its expense and pay him until such return, unless employee should elect to remain in Alaska, in which event his employment shall terminate at the cannery.

34. The Union shall not interfere with the performance of work outside of the general scope of this agreement, provided such work is customary in the Salmon Industry in the particular locality, and is arranged for with the other employees by the employer on mutually satisfactory terms and conditions, nor shall the Union or its members interfere with the performance of any work by other employees, provided it is customary in particular localities to employ other employees to perform such work.

35. Provision shall be made to keep the general crew quarters clean, make fires when necessary, and to keep said quarters in a sanitary condition. All canneries shall have good clean shower baths, laundry room and suitable clothes drying facilities.

36. When emergency requires, work necessary for safety of vessels or any other Company property, shall be done at any and all times without extra compensation.

37. Sufficient copies of this agreement shall be posted in a conspicuous place in the canneries.

38. Suitable records of overtime and other work

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

for which extra pay is allowed shall be kept in triplicate and compared and approved daily the the employee, Company timekeeper, Foreman and Delegate and one copy furnished to delegate.

39. Where cemeteries are located, a suitable time, preferably Memorial Day shall be agreed upon and cleaning of plots, fences, painting of headboards, etc., shall be done by a detail of not to exceed five men under the supervision of the delegate.

Holidays to be observed are: Memorial Day, Independence Day and Labor Day.

If work is done on holidays, overtime shall be paid at the overtime rate. One day out of each week of seven days, which day shall be Sunday prior to and after the fishing season and Monday during the fishing season, shall be deemed a normal day of rest, and if employee shall be required to work on such days, he shall perform such work, but all work so performed shall be construed to be overtime and shall be paid for at the overtime rate. There shall be at least eight (8) hours of rest in each twenty-four (24) hour period, unless employee elects to work during such rest period.

40. The parties hereto, hereby, waive the provisions of Chapter 45 of the Session Laws of the Territory of Alaska for the year 1925 and all amendments thereof, and Acts supplemental thereto, and agree that the payment of wages and other compensation referred to in this contract shall be in accordance with the provisions of this agree-

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

ment and without regard to the requirements of said Act.

41. The employee also agrees that he will not take on board vessel, or have in his possession at the cannery, any intoxicating liquor or narcotics and that should any intoxicating liquor or narcotics be found in his possession, the Company shall have the right to destroy the same. The employee agrees to allow his baggage to be searched. Employee also agrees not to smoke in the warehouse, box factory or any place where smoking is prohibited nor to become intoxicated, nor to engage in brawls or fights, or to gamble at any time either on board the vessel or in Alaska.

42. This agreement shall be effective for the 1939 season. It is further agreed that in the event either party should desire to modify, change, o terminate, such conditions or practices at the expiration of the 1939 season, written notice must be given on or before February 1, 1940, and that if special notice is not given within such time by either party, the same conditions and practices shall be automatically considered as renewed for an additional period of one year.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-A—(Continued)

Dated.....

uopwa-34

..... Company

By .....

UNITED CANNERY AGRICULTURAL PACKING AND ALLIED WORKERS OF AMERICA

.....

.....

CLAIMANTS' EXHIBIT No. 3-B

1939—

AGREEMENT WITH UNITED CANNERY, AGRICULTURAL PACKING AND ALLIED WORKERS OF AMERICA

This agreement, made and entered into between ----------, a Corporation, for their Alaska canneries, the party of the first part hereinafter referred to as the "Company" and the United Cannery Agricultural Packing & Allied Workers of America, C.I.O, in behalf of the Alaska Cannery Workers' Union, Local No. 5, the party of the second part, and each and severally, it is agreed:

WITNESSETH:

1. The Company agrees to recognize the Union

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

as the exclusive and sole bargaining agent of all its employees engaged for Alaska Salmon Cannery operations from the States of California, Oregon and Washington, for the 1939 season in the capacities herein listed and commonly termed "Cannery Labor." The Company shall procure all employees not residents of Alaska who come under the jurisdiction of the Union, through the Union headquarters or the Union hiring halls.

2. The Company shall not discriminate against any member for any Union activities, race, color or creed, or for a law-suit or any legal action instituted because of dispute of contract.

3. In the event those employees selected as herein provided are not members of the Union, they shall be issued an official permit by the Union. At the time of departure for Alaska, such employees shall be either members of the Union or have received an official permit from the Union.

4. Any disputes that cannot be settled at the cannery are to be adjusted and settled after the season at port of embarkation of the expedition. Under no circumstances will Superintendents or agents of the Company be compelled to sign any disputed wage claim.

(a) It is hereby understood that making any payment does not release the Company from liability if such liability exists.

5. No member will be required to pass through a picket line established by Organized Labor, nor

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

work where armed guards are employed during a dispute. A refusal to do so will not be considered a violation of this agreement.

6. The Company agrees to recognize not more than two members of the crew of each cannery designated by the Union as the delegate or shop steward and agrees to pay one such delegate $25.00 per month above Class "A" scale of wages at each cannery.

(a) The Union claims certain definite rights and benefits in behalf of its membership as outlined in this agreement, and these rights shall be upheld by the authorized delegate; who shall act as representative and spokesman of the Union, and in the event of a dispute or misunderstanding, he will be vested with the authority to settle to the best of his ability, all issues that may be brought to his attention. Further, a delegate is authorized and instructed that strict observance of all rules and regulations, hours, wages and general conditions are to be observed. He shall endeavor at all times to settle all matters and issues in a satisfactory manner to all concerned.

7. It is expressly agreed that neither the Company or its representatives nor the Union or its representatives has the power or authority to change the provisions of this agreement.

8. The employees shall go on board any vessel designated by the Company when and where directed, and shall return to the port of embarkation upon

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

any vessel designated by the Company when and where directed, unless the employee does not desire to return to the port of embarkation as directed, in which event the Company shall be relieved of all obligations to the employee for return transportation.

9. It is understood and agreed that before embarking, all employees shall submit at such time and place as the Company made designate, to a physical examination by a qualified physician, including those members requiring special certificates as food handlers, etc., no costs in connection with the examination and certificates shall be borne by the Union or its members.

(a) Where members are required to submit to a physicat examination same shall be done in a dignified manner, with regard to the method used.

(b) Members shall not be required to undress or drop their pants in areas exposed to public gaze. Companies shall be responsible for suitable arangements.

(c) Any employee covered by this agreement, who from injury sustained while at work for the Company through no fault of his own is prevented from working according to the judgment of a physician, is to continue to receive his respective pay according to the agreement during the period of the injury; provided, however, that in the event the injury to any employee comes within the purview of the Workmen's Compensation Act for the Terri-

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

tory of Alaska, or any other compensation act, territorial, federal or state, the employee will receive the benefits specified in such applicable compensation act, and in addition thereto, such amount as will equal the difference between the compensation paid and the pay of such employee according to this agreement. Provided, further, that if the disability continues beyond the termination of the season, he shall receive thereafter only the amount to which he would be entitled under the Workmen's Compensation Act for the Territory of Alaska or any other compensation act applicable to his employment. The employee if and when injured shall report such injuries to the foreman in charge immediately at the time of the injury. Any such employee shall be entitled to medical and surgical attention and necessities without cost, in accordance with the requirements of the Workmen's Compensation Act for the Territory of Alaska or any other compensation act applicable to his employment.

(d) Any employee covered by this agreement who is laid up because of sickness or natural ailments or an injury sustained outside the scope of his employment, and who is unable to work according to the judgment of a physician, shall be paid his monthly wages and all other earnings up to the date so laid up, and shall thereafter be paid only the sum of $50.00 per month from the date so laid up until able to work, or until placed in a hospital, or until transported to a place where hospital facilities are available, at which time the Company's

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

liability shall cease. It shall be, however, the thorough understanding that in the case of sickness or natural ailments, or an injury sustained outside the scope of his employment that the Company will not be liable for wages after the date the majority of the employees of such cannery have arrived at the port of embarkation. In the event of a dispute, the Superintendent will also make an effort to secure the opinion of another qualified physician. All employees so laid up through sickness or natural ailments while engaged under this contract, shall receive medical and surgical attention and necessities without charge so long as they shall be entitled to payment of the $50.00 per month under the terms of this action. This does not apply in cases of proven or obvious venereal diseases, intoxication, brawls or fights.

10. Medical, Dental, Surgical and nursing services shall be furnished by the Company free of charge, except in cases of proven or obvious venereal diseases, intoxication, brawls, or fights. Dental service shall consist of extractions and the treatment of infections resulting from said extractions. First aid kits, equipment, and stretchers shall be available on vessels and in canneries.

(a) In case of serious illness or accident, where no competent hospitalization or suitable medical attention is immediately available, every feasible effort shall be used by the Company to transport the men to the nearest hospital.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

(b) All physicians, wherever employed shall be recognized, qualified licensed practitioners and nurses certified First Aid Men.

11. Unless expedition is abandoned, any man who has signed the Company's agreement and been accepted by the Company, and is discharged for physical disability, drunkenness, or any other legitimate cause, shall be paid $75.00 in full compensation, said compensation to be paid within forty-eight (48) hours after such discharge. The Union reserves the right to furnish Doctors for the purpose of examination where rejection has been made.

12. If members are hired for a long job such as Construction or purposes other than cannery work, the Company shall notify the Union before sailing.

(a) School, Poll, Social Security and other taxes assessed against employees and payment of compensation insurance or hospitalization authorized by any Federal, State or Territorial Law, shall be deducted by the employer from any wages due and the employer shall withhold any payments when required to do so by writ of garnishment or other legal proceedings or by valid assignments. Before acceptance the Company shall verify assignments with the individual employee.

(b) During the course of the season, men or members with families dependent upon them, shall receive advances.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

1. First foreman with dependents, shall be given $75.00 a month.

2. Second foreman with dependents, shall be given $50.00 a month.

3. Cooks and Bakers with dependents, shall be given $50.00 a month.

4. Members with dependents, shall be given $35.00 a month.

5. Members shall be given an advance of $5.00 on boats.

The allowance shall be paid twelve (12) days after sailing to Alaska and every thirty (30) days thereafter.

13. In the event any employee refuses duty or voluntarily quits his employment, his wages shall cease immediately.

14. The Company guarantees each employee covered by this agreement hired outside the Territory of Alaska, not less than two months wages in accordance with the position as per classification, unless employee should be discharged or quits as herein provided.

15. On days of arrival or departure the hour twelve (12) midnight shall be considered the basis for the computation of the payroll. On days of arrival or departure one full day shall be paid irrespective of exact time of arrival or departure with regards to the hour of 12 midnight. Wages shall commence on the day of departure and terminate on

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

the day of return to the port of dispatching, except as herein otherwise provided.

In the event that any employee does not elect to return to original port of embarkation upon a suitable vessel by and at the direction of the Company at the termination of the season, his employment shall be considered terminated and he shall be paid all wages due him within forty-eight (48) hours, subject to all provisions of this agreement, in which event the Company will be relieved of all obligations to the employee for return transportation.

16. It is agreed and provided that the sum of $10.00 shall be made available to each employee, if due, not later than the day of arrival in home port and further provided that the Company shall pay directly to all employees all earnings due within forty-eight (48) hours after arrival, holidays and Sundays excepted. Failure on the part of the Company to meet this requirement shall constitute a just claim by the employees to an additional pro-rata monthly or seasonal wage rate for each day of delay, including subsistence at $3.00 per day.

17. Members or men signed up for a definite classification and wage scale on embarkation shall not be paid any lower rate if they are required to perform general work before, during or after cannery season unless they prove incompetent in the opinion of the cannery workers' foreman and the cannery superintendent. In that event they may be reduced to a lower classification of pay and a

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

man from a lower classification can be elevated and receive the pay designated for a worker demoted.

18. The Company agrees to provide a phonograph and forty-eight (48) assorted records for use at the cannery by employees covered by this agreement.

19. Employees whose work is such that it has been the custom to necessitate the use of oil skins, oil skin aprons, boots, sleeve guards or gloves, shall be supplied free of charge with these necessities. Lye wash and retort men are to be supplied leather gloves. Such equipment shall be returned to the Company at the Superintendent's discretion. Rubber boots and other equipment referred to above shall be kept hygienic and sanitary by employees using same.

20. No employee shall be required to work where hazardous or unsafe conditions exist.

21. A suitable number of fire extinguishers shall be placed at strategic points in cannery plants.

22. Cooks required by the Company to make vessels shipshape, check vessel supplies, or prepare meals before ship sails for cannery shall be paid for each day and hour at the regular per day rate, but not less than four (4) hours shall be paid whether the work lasts that long or not.

23. All time worked in excess of the hours herein provided shall be paid at the regular overtime rate for cannery work.

(Testimony of Vincent Rendon:)

Claimants' Exhibit No. 3-B—(Continued)

(a) Forty-eight (48) hours of work shall constitute a week's work. If the forty-eight (48) hours have not been worked during the week, they shall not be required to make it up in the succeeding week.

(b) Before and after the actual canning season Sunday shall be the recognized day of rest each week. During the actual canning season Monday shall be deemed the day of rest, in addition to all recognized holidays and all work performed on these days shall be paid at the applicable extra compensation rate agreed herein.

24. The following rate of compensation shall apply in the respective classifications of employment and districts.

BRISTOL BAY

	1st Foreman Per Season	2nd Foreman Per Season
Foremen		
1 and 2 line canneries	$ 900.00	$625.00
3 lines	925.00	650.00
4 lines	1,000.00	675.00
5 lines	1,050.00	700.00

If their services are satisfactory, in lieu of overtime, First Foreman shall receive 15% and Second Foreman shall receive 10% of season's earnings.

Cooks		
First Cook	$175.00	per month
Second Cook	125.00	" "
Cook's Helper at Diamond U Cannery only	110.00	" "
First Baker	150.00	" "
Second Baker	125.00	" "
Cooks Helper, disherwashers, waiters	85.00	" "

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

Any eight hours out of twelve (12) shall constitute a day's work.

Any time over eight (8) hours shall be considered overtime. Men can be started as required.

The overtime rate for all kitchen help shall be at the rate of ninety cents (90c) per hour, including Sundays and Holidays.

Cannery Workers	
Classification "A"	$100.00 per month
Classification "B"	90.00 " "

For cannery workers (8) hours from 8:00 A.M. to 5:00 P.M. shall constitute a day's work before, during and after the canning season. Any part of crew may be started before balance of crew.

Overtime shall be paid for at the rate of sixty-five cents (65c) per hour.

Longshore work shall be paid for at the rate of $1.00 per hour.

FOR WESTWARD ALASKA OR COOK INLET DISTRICTS AND CHIGNIK, KARLUK AND ALITAK CANNERIES

Foremen	1st Foreman Per Season	2nd Foreman Per Season
1 and 2 line canneries	$1,050.00	$725.00
3 lines	1,075.00	750.00
4 lines	1,100.00	775.00
5 lines	1,125.00	800.00

If their services are satisfactory, in lieu of overtime, First Foreman shall receive 15% and Second Foreman shall receive 10% of season's earnings.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

Cannery Workers

Classification "A"	$100.00 per month
Classification "B"	90.00 " "

For cannery workers eight (8) hours from 8:00 A.M. to 5:00 P.M. shall constitute a day's work before, during and after the canning season. Any part of crew may be started before balance of crew.

Overtime shall be paid for at the rate of sixty-five cents (65c) per hour.

Same wages shall be paid in Western Alaska as in the Bristol Bay Area.

Longshore work shall be paid for at the rate of $1.00 per hour.

25. The following cannery workers classifications and capacities are those referred to in Section 24. In the event any classification is not specified or is known by other names, or new classifications are to be added, wages and benefits and the definite classification shall be agreed upon and supplemented to this agreement and made retroactive to the leaving and return of expedition.

A	B
Can Pilers	Patching Table
Pitchers and Sluicers	Reform Feeder
Scow Men, Hook Fish	Clincher, Vacum
Sorters	Machine & Salt Men
Fish House Bins	Catching and Piling,
Elevator in Fish House	Empty Cans & Boxes
Filler Hopper Man	Warehouse Crew

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

A—(Continued)

Hand Labeling Crew; where hired as such
Men wiring & Stitching boxes
Fish Inspector
Can Tester
Caseing Machine Operator
Iron Chink Feeders and Butchers
Catching cans on line by hand
Slimers
Gang knives, where used
Filler feeders
Operator of cooler loaders
Retort & lye wash men
Men regularly supplying coolers to line
Labeling Machine Operator, where used permanently.
Wooden Box Maker & Nailer
Full Box Pilers, where hired as such
Solderers & Tin Cutters
Jitney Driver in cannery
Slitter, Machine feeders & Relief men

B—(Continued)

General Can loft work
Other General Cannery Work
Janitors

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

26. All work involving the handling of cargo moving directly to a ship's tackle or scows from the last point of rest on the dock or in the warehouse or all cargo moving from the ship's tackle or scows to the first point of rest on the dock or in the warehouse, shall be considered longshore work and be paid for at the scale agreed herein.

27. Construction of buildings or appurtenances, razing of buildings or repair, ditch digging, clearing land, shall be classed as miscellaneous work and paid for at the rate of 75c per hour, regardless of the time such work is performed. All other work, except longshore work, not specifically mentioned herein shall be performed during the regular work day without extra compensation.

28. When actual overtime worked is less than one-half hour, one-half hour shall be paid. When overtime exceeds one hour, payment will be allowed on actual time worked but not less than one-half hour periods.

29. In the event that the cannery is destroyed, or so greatly damaged from any cause or the laws, rules or regulations with reference to salmon fishing or canning be changed, or that in the Company's judgment, because of strikes or for any reason, it would be impossible or unprofitable to continue operations, the Company shall comply with Section 14 and may terminate this agreement excepting that the Company shall return each employee covered by this agreement to the point where hired at its

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

expense and pay him until such return, unless employee should elect to remain in Alaska, in which event his employment shall terminate at the cannery.

30. Provision shall be made to keep the general crew quarters clean, make fires when necessary, and to keep said quarters in a sanitary condition. All canneries shall have good clean shower baths, laundry room and suitable clothes drying facilities.

31. (a) All meals shall be served in crockery-ware, wherever possible, whether on vessels or in canneries, and knife, fork and spoons shall be supplied. Replacements of enamel ware shall be made for the 1939 season with crockery-ware on all vessels and in all canneries.

(b) All meals shall be served in American style and standard, but this section does not preclude the use of foreign foods when required.

(c) While vessels are enroute breakfast, lunch, and dinner shall be served.

(d) Meals shall be served in the following manner: Breakfast at 7:00 A.M. and at each five hour period on the completion of that meal, during actual canning season and at 4-hour intervals before and after actual canning season.

(e) If men are worked more than 5 hours without a meal, they shall be paid a penalty of time and one-half of the prevailing rate as the case may be, except in cases of breakdown of ranges or other cases where the Company may not be at fault.

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

(f) No less than 60 minutes shall be allowed for each meal, before and after actual canning season. During the actual canning season, thirty minutes may be taken.

(g) Sufficient food of a diversified character shall be furnished and wholesome meals of good quality and sufficient quantity shall be available at all meals.

(h) Proposed menu to be agreed upon and made a supplement to this agreement.

32. Sufficient copies of this agreement shall be posted in conspicuous places in the canneries.

33. Where cemeteries are located, a suitable time, preferably Memorial Day shall be agreed upon and cleaning of plots, fences, painting of headboards, etc., shall be done by a detail of not to exceed five men under the supervision of the delegate.

Holidays to be observed are:

Memorial Day

Independence Day

Labor Day

If work is done on holidays, overtime shall be paid at the overtime rate. One day out of each week or seven days, which day shall be Sunday prior to and after the fishing season and Monday during the fishing season, shall be deemed a normal day of rest, and if employee shall be required to work on such days, he shall perform such work, but all work so performed shall be construed to be overtime and shall be paid for at the overtime rate. There shall be at least eight (8) hours of rest in each twenty-

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

four (24) hour period, unless employee elects to work during such rest period.

34. Suitable records of overtime and other work for which extra pay is allowed shall be kept in triplicate and compared and approved daily by the employee, Company timekeeper, Foreman and Delegate and one copy furnished to delegate.

35. The parties hereto, hereby, waive the provisions of Chapter 45 of the Session Laws of the Territory of Alaska for the year 1925 and all amendments thereof, and Acts supplemental thereto, and agree that the payment of wages and other compensation referred to in this contract, shall be in accordance with the provisions of this agreement and without regard to the requirements of said Act.

36. (a) Employee also agrees not to smoke in warehouse, box factory or any place where smoking is prohibited nor to become intoxicated, nor to engage in brawls or fights, nor to gamble at any time either on board vessel or in Alaska.

(b) The policy of the Union is unalterably opposed to gambling in any form, and the sale and use of dope or excessive use of intoxicating liquors. Foremen are pledged to cooperate with delegates in eliminating the above mentioned vices, and the Company will lend its full support to the abolition in every instance.

37. This agreement shall be effective for the 1939 season. It is further agreed that in the event either party should desire to modify, change, or terminate,

(Testimony of Vincent Rendon.)

Claimants' Exhibit No. 3-B—(Continued)

such conditions or practices at the expiration of the 1939 season, written notice must be given on or before February First, 1940, and that if special notice is not given within such time by either party, the same conditions and practices shall be automatically considered as renewed for an additional period of one year.

Dated .....

.....

Company: Union:

By ....

.....

.....

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.....

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nopwa-34

The wage scale for the season at Bristol Bay is the same for cannery workers whether they ship from Seattle or San Francisco, but the wage scale for operations to Chignik, Karluk, Alatek, and Cook Inlet are different. The 1939 Seattle agreement provides for cannery workers, Classification A, $90.00 per month, and cannery workers of Classification B, $80.00 per month. The San Francisco agreement in 1939 provided for cannery workers to the same operations of Classification A, $100.00 a month or ten dollars more, and Classification B, $90.00 a month. [27]

(Testimony of Vincent Rendon.)

With respect to foremen—I won't read these, but I want to direct he Commission's attention to page five of the San Francisco agreement listing the wage scales for foremen, and to page 7 of the Seattle agreement containing the wage scale for foremen in Seattle—scales being lower.

I also want to direct the Commission's attention to the same page 5 of the San Francisco agreement containing the wages for Cooks and Cooks Helpers and Bakers; to page 7 of the Seattle agreement where the wage scales appear for Cooks and Bakers—and the wage scales there are also lower.

These wage scales can be determined by comparison of these two agreements, and it won't be necessary for me to identify them any other than that, I don't think.

I also want to point out with respect to certain conditions that exist in the San Francisco and Seattle operations, which will appear by the reading of the two agreements.

By Mr. Resner:

Q. Well, as I understand it, you offered the San Francisco agreement and that was rejected?

A. (Mr. Rendon) Yes.

Q. What was the position of the union with respect to these Claimants? Today, with respect to these operations in Alaska, are they willing to go to work? and, if so, under what conditions?

A. Through our membership I can say until the present time our members are willing to go for 1939 wages and conditions of San Francisco. And that

(Testimony of Vincent Rendon.)

is the offers we give to the Canned Salmon Industry to the last, May 29th.

By Referee Roden:

Q. When did you say you made that offer?

A. May 29th.

By Mr. Resner:

Q. That was for the season commencing when?

A. Commencing of this season, of 1940.

Q. I know, but when did the operations start up there?

A. That depends sometimes to the companies when they open—sometimes June and sometimes May, I don't know exactly when was the definite date.

Q. Mr. Resner: I think those are all the questions I have to ask Mr. Rendon. If any of you gentlemen have any you can ask at this time? [28]

Cross Examination

By Mr. Madison:

Q. I would like to ask a question or two, Mr. Rendon. You say you offered to sign on the San Francisco wage scale on May 29th? A. Yes.

Q. To whom did you make that offer?

A. To Van Hoevenberg.

Q. You made that offer to Mr. Van Hoevenberg in Seattle? A. In Seattle.

Q. Did you conduct all the negotiations with regard to the cannery workers contract in Seattle with Mr. Van Hoevenberg?

A. That is what Mr. Van Hoevenberg told us, that all negotiations will be carried in Seattle, be-

(Testimony of Vincent Rendon.)

cause the Canned Salmon Industry—they say that is representing by so many companies, including the Alaska Packers, the Red Salmon, and then the Alaska Salmon.

Q. What I asked you was, you did carry on all your negotiations in Seattle? A. Yes.

Q. Did you have any negotiations in San Francisco with Mr. Paul St. Sure?

A. Yes, with wage scale.

Q. How many meetings did you have with Van Hoevenberg and Mr. Paul St. Sure?

A. I think in Seattle it is 18 meetings.

Q. 18 meetings in Seattle?

A. While I was in Seattle. But I don't know if they have any meeting when I was not there.

Q. In other words, you don't know how many meetings they had, but you know they had at least 18 because you were there. And when *was you* had, do you recall, approximately?

A. That is on March 7th.

Q. And when was the last meeting you had up there, if you recall, approximately?

A. That is May 29th.

Q. When you made this offer about going on the San Francisco 1939 wage scale? A. Yes.

Q. And how many meetings did you have in San Francisco at which you were present?

A. While I was here in San Francisco I met Mr. Moore about three times, and then one Mr. Paul St. Sure.

Q. That is, four meetings altogether or three meetings altogether? A. Four meetings.

(Testimony of Vincent Rendon.)

Q. Four meetings altogether. One with Mr. St. Sure and the other three with Mr. Moore?

A. Mr. Moore. [29]

Q. What was discussed at the meetings in San Francisco with Mr. Moore and Mr. St. Sure?

A. We cannot discuss. I told them that we cannot discuss about the agreement. The only discussion that we can make to the Company is the Manning scale and improvement.

Q. Will you explain to me what the Manning Scale is? I am not familiar with it.

A. You see, in the canneries sometimes they carry for one line 42 men, sometimes 44, and then in five lines in some canneries they carry 150, sometimes 160. That is what we have to contact the companies about, the Manning Scale—how many men they are going to employ in this season.

Q. In other words, the number of men it is necessary to man the line? That is what they call the Manning Scale? A. Yes, sir.

Q. Now, what did the unions contend as to the number of men that would be required?

A. We don't contend anything. The only things that we are asking sometimes to the companies that they need some more men in a certain place to carry on the production because of the speed of their machinery.

Q. In other words, you had a feeling unless the companies had enough men that they would speed

(Testimony of Vincent Rendon.)

up the machinery and make your fellows work harder, is that it? A. No.

Q. Will you explain it to me? I don't want to put words in your mouth.

A. Well, you see, in some of their canneries they had 120 to 150 can a minute, and some canners 145. To keep up their speed of their machine required more men.

Q. Required more men? A. Yes.

Q. What was the company contending? Did they contend they needed more men or fewer men?

A. Sometimes the companies say they cannot hire any more men.

Q. And you felt they should hire some more men?

A. Yes, I feel to keep up the speed of this machinery.

Q. They should hire additional men, you felt?

A. Yes.

Q. And so the discussions you had with Mr. Moore and Mr. St. Sure were in regards to how many men should be hired to go up there?

A. Yes, sir.

Q. And the Company wanted a certain number and the unions felt they should hire more. Was that the way the matter was discussed?

A. The Company sometimes say they cannot add more men. Well, the unions, we cannot insist because the company is the one that pays. [30]

Q. I know that. In these discussions you had these discussions, you say, lasted an hour or two hours. There was some discussion, wasn't there, as to how many men should be hired? A. Yes.

(Testimony of Vincent Rendon.)

Q. And you contended they should hire more than they wanted to hire, wasn't that it?

A. Well, I was to tell to the Company that we can't keep up the speed of your machine. You have to hire some more men so to put up more production in your plants.

Q. And the companies felt the men they wanted to hire were enough to keep up the production?

A. Yes.

Q. That is correct. So the discussion centered around that *particul* subject?

A. Yes. And sometimes about the quarters, the living, where we lived at. Sometimes we don't have enough beds to sleep, or sometimes the houses is not fit to live a human being?

Q. I understand. And you were contending you should have more beds?

A. No. We contended that the help should have better quarters.

Q. The men should have better quarters?

A. Yes.

Q. And the company was taking the position the quarters you had were adequate for the purpose?

A. Yes.

Q. So you had some discussion about that?

A. Yes.

Q. And did you have those discussions with Mr. St. Sure and Mr. Moore here? A. Yes.

Q. During those four meetings you had?

A. Yes.

(Testimony of Vincent Rendon.)

Q. Was there anything else discussed at those meetings?

A. I think that is all that I can remember.

Q. How long would you say those meetings were? Those four meetings on the average?

A. Well, sometimes we stay for half an hour, sometimes an hour and half, and then one we stayed over two hours with Mr. Jones and Mr. Kellogg.

Q. That lasted how long, the one with Kellog?

A. Over than two hours, because those superintend the companies operation in Alaska.

Q. In Seattle you had these meetings with Mr. Van Hoevenberg and Mr. Ellsworth. You had 18 meetings, you say. What was diacussed at those meetings? Wages was discussed, for one thing?

A. Wages, No.

Q. Wages were not discussed?

A. Was not discussed. The only discussion we have is the wording of the contract. [31]

Q. The only discussion you had was the wording of the contract? A. Yes.

Q. What provisions of the contract did you discuss?

A. Like previous years—the union, who have the right to ship our men in Alaska? Our members. But this year the company—Mr. Van Hoevenberg and Mr. Ellsworth there—was telling us they are going to put their own men to do the hiring of the men.

Q. Explain that to me again? What you say at first there?

(Testimony of Vincent Rendon.)

A. Previous year we are sending our own men.

Q. You sent your own men. In other words, you picked out the men who were to go under the contract?

A. They are members of our union, surely.

Q. In other words, you check me if I am wrong, the practice has been in the last three or four years for your union to make a contract with the employers. Prior to this year it was with employer separately? A. Yes.

Q. With the Alaska Packers, for instance?

A. Well, you see, we did not mention the name of the companies in Seattle. Van Hoevenberg was negotiating the agreement for the whole Canned Salmon Industry. And then he was always contending that the companies would hire the men.

Q. He contended the company would have the right to pick out the men? A. Yes.

Q. So long as they are members of your union, of course?

A. Well, there is a provision of their contract. It says there in 1939 that the companies have a right to put their own men on and then the unions give them some kind of permit card to work in the industry. But in San Francisco—we don't have that provision here in San Francisco.

Q. In San Francisco the Union picks out the men?

A. We send the men and the companies will tell us only that they need four hundred and we will give them the four hundred.

(Testimony of Vincent Rendon.)

Q. And you send them down to the boat and they get aboard the boat and go to Alaska?

A. No. They go in the boat and the companies will distribute them their bands and everything. And the company stewart says he is all right. If the company doctor says he is no good—he has some kind of sickness.

Q. He is taken off and another man put in his place? A. Yes. [32]

Q. And that medical examination, that doctor examination, is done here in San Francisco?

A. San Francisco.

Q. Before the men get on the vessel or the time they get on the vessel?

A. The time they go in the vessel.

Q. Now, what else did you discuss up there in Seattle? What other wording?

A. We discussed about the wages twice, but always Mr. Hoevenberg has refused they would operate Alaska if there will be an additional expenses for it more than 1939 Seattle.

Q. In other words, he took the position that they could not pay any more than they had paid in Seattle in 1939? A. Yes.

Q. And that was less than they paid in San Francisco in 1939? A. Yes.

Q. In other words, the Seattle Canneries had a better deal with the union than San Francisco?

A. I don't say that we have a better deal here.

Q. They get better wages? Put it that way?

A. No, we have the same wages in Bristol Bay.

(Testimony of Vincent Rendon.)

Q. What about Central Alaska?

A. Central Alaska? That is only about ten dollars, a little bit higher, but the way we take that position, we ask for ten dollars more because they are using—they don't buy the fish there. They have a truck and they just take the fish right there in that trap.

Q. Well, the fact of the matter is, though, the wages the Seattle operators had to pay in 1939 were not as much as the wages which the San Francisco operators had to pay in 1939? Isn't that right?

A. I don't think that is it.

Mr. Resner: Yes, that is right as the agreement sets it forth. That is in evidence.

By Mr. Madison:

Q. Well, now, the question of wages. As I understand it, Mr. Van Hoevenberg took the position that the canneries were not able to pay any more than the 1939 Seattle wages, or at least they would not pay it?

A. No. He take his position to take it or else, "If you don't take that wages we will close the operations, and then you fellows will be out of work."

Q. And you took the position that you would not work except on the basis of the 1940 proposed contract which you gave?

A. No. Our position here is to accept the 1939 of San Francisco wages. [33]

Q. When did you first tell them that?

A. The first time? In March 8th they told me

(Testimony of Vincent Rendon.)

that it is 1939 wages. I misunderstood, myself: I sent a wire here in San Francisco that the companies they are offering the 1939 wages and conditions. But after the next day I find from them what this 1939 wages and conditions is. They say that it Seattle.

Q. What?

A. Seattle wages and conditions. Because I want to clarify that because our membership here in San Francisco want to go on 1939 of San Francisco wages and conditions.

Q. I understand that you submitted to Von Hoevenberg an offer on May 29th to accept San Francisco 1939 wages, is that correct?

A. Yes, sir.

Q. Did you ever tell Mr. Von Hoevenberg before that you would accept 1939 San Francisco wages?

A. No, because his position was to take it or else.

Mr. Resner: When you say that, you are referring to the Seattle Scale?

By Mr. Madison:

Yes.

Q. Take the Seattle wage scale, and nothing else?

A. And nothing else.

Q. And you never made any offer to Mr. St. Sure or Mr. Moore down here in regard to taking the 1939 San Francisco wage scale?

A. We did once. That was on April the 3rd when they give us the ultimatum of Chignik and Karluk. Yes.

(Testimony of Vincent Rendon.)

Q. That is the Central Alaska operation? The one that leaves the 1st. A. Yes.

Q. And, you say, at that time?

A. That we like to sign San Francisco. We like to sign a memorandum agreement not less than 1939.

Q. Not less than 1939?

A. Not less than 1939 wages and conditions.

Q. San Francisco? A. San Francisco.

Q. What do you mean, not less than that? How would you ever determine the wages if you had it "not less than"?

A. Because you would have a contract off them for 1939. That is a hundred. That is, not less than 1939. That is a hundred dollars and ninety dollars.

Q. How would you determine the wages? You say not less than something. How would you determine how much they would be? [34] Do I make myself clear? I guess not. Let me ask you the question this way. Do I understand that you told Mr. St. Sure on April 3rd that you would go to Alaska for the San Francisco 1939 wages?

A. Yes.

Q. You say not less than that. You mean you would go for those wages?

A. No. We will go for it, but if they will offer us ninety nine dollars we won't go for it. But if they will offer the same wages—a hundred dollars and ninety dollars, 1939—we will go for that.

Q. You will go for that? A. Yes.

Q. You told that to Mr. St. Sure?

A. I told him that. I told that to Mr. Moore.

(Testimony of Vincent Rendon.)

Q. You told that on the meeting of April 3rd?

A. That is the last meeting that we had.

Q. That is the last meeting you had with Mr. Moore? A. Mr. Moore. That is April 3rd.

Q. You never confirmed that by a letter? You never wrote a letter on that? A. No.

Q. Are you sure that wasn't May 3rd? Are you sure it was April 3rd?

A. That may be the deadline, I don't know. What is the date? You say that is the deadline, May 3rd?

By Mr. Resner:

Q. The point is when was this offer made to Mr. St. Sure to sign for 1939 San Francisco wages?

A. That is about? We was there in your office twice, I think. Mr. Moore, he can recall it—in the afternoon and then after six o'clock.

Referee Roden: When was it, Mr. Moore, do you remember?

Mr. Paul St. Sure: May 3rd.

A. (Mr. Rendon) Yes, May 3rd.

By Mr. Madison:

Q. Well, May 3rd, Wasn't that the date when the companies notified you it would be the last day they could sign up if they were going to Bristol Bay?

A. No, I believe that is the Chignik and Karluk.

Q. Now, in going back to this question of whether you were to hire the men, to choose the men to work, or the company were to choose the men to work, I understood you to say that in Seattle companies in the past years had picked out their own men. Is that right? [35] Members of the union?

(Testimony of Vincent Rendon.)

A. No. Sometimes they pick out outside.

Q. Sometimes they pick them out outside?

A. Sometimes they are not members of the union.

Q. But in San Francisco the union, as you have explained, chooses men? Sends them down to the boat under contract, in San Francisco?

A. Yes.

Q. Did you have a discussion with Mr. Von Hoevenberg as to what he wanted and what you wanted in regards to 1940?

A. Well, he says the industry are paying their money. That they want to see that the men that goes to Alaska is a good man.

Q. And you contend that you wanted San Francisco to do it the way you had always done it before?

A. Yes, because our members here they have an experience since 1935.

Q. And how many times was that discussed, do you recall? Three or four or five times?

A. I can not recall how many times, because always we have that discussion.

Q. The same thing was discussed at all the meetings, pretty near?

A. The same thing every day, every time we have meetings, and he always say, "I will accept this, but don't put it into it because I have to bring this to my company. If my company likes it we will bring you back again that they like it. But don't put it into record at all because we are like messenger boys. We have to bring back and forth what they like."

(Testimony of Vincent Rendon.)

Q. Now, did they ever agree? Did you ever reach an agreement on that as to whether you would follow the old way or do it Mr. Van Hoevenberg's way?

A. They always say, "You have to accept this."

Q. Or else? A. Or else.

Q. Now, what else did you discuss besides the wages and question of who hires the men?

A. That is all we discuss, wages and conditions.

Q. What conditions were discussed?

A. The 1939 or the 1940.

Q. Were there any particular conditions other than wages that were discussed? Was there any seniority discussed? Any argument or dispute in regards to seniority? A. No.

Q. Was there any argument or dispute in respect to any conditions except the ones we have already talked about? A. No.

Q. In all these 18 meetings the only two things discussed were wages and methods of hiring the men? A. Yes. [36]

Q. And these meetings lasted, as I understand it, an hour, half an hour?

A. Hour, sometimes, half an hour, sometimes, mostly two hours, and then sometimes they says they don't have no time.

Mr. Madison: No further questions.

(Testimony of Vincent Rendon.)

Examination by Referee Roden:

Q. Have you a copy of the 1939 contract?

A. What is that?

Q. Have you a copy of the 1939 contract?

A. Yes, there is a copy.

Mr. Resner: It is in evidence. The 1939 San Francisco and Seattle agreements are both in evidence. They can be compared with reference to wages and conditions.

By Mr. Madison:

Q. Could I ask one more question? I want to make it clear you never did reach an agreement with these people in Seattle, did you?

A. The last meeting that we have we have an agreement to them of this 1939 of Seattle. And then they give us some kind of a raise to the kitchen personnel, but not to the canneries cannery workers.

Q. So you really never did reach an accord?

A. We did reach.

Q. You did reach an agreement? A. Sure.

Q. When did you reach it? The last meeting in Seattle?

A. The last meeting, I forget the date.

Q. You say the last meeting was May 29th?

A. No, that is not—yes, May 29th.

Q. And you reached an agreement with them?

A. Yes. We sent a man, already, in Alaska.

Q. That is, in regard to the people in Seattle.

A. Yes.

Q. But I am talking now about the people in

(Testimony of Vincent Rendon.)

San Francisco. A. You don't use us here.

Q. You never did reach an agreement?

A. No. Well, we did. We have an agreement to the Canned Salmon Industry.

Q. In regard to the Seattle workers?

A. No, that includes Seattle, Portland, and San Francisco.

By Mr. Resner:

Q. But they are not using anybody from the San Francisco operation?

A. (Mr. Rendon) No. They are not using anybody from the San Francisco union. [37]

By Mr. Madison:

Q. Is it your contention the agreement you made, signed in Seattle, was to cover San Francisco also? A. Yes.

Q. That was your intention in signing the agreement that the agreement was to cover San Francisco also?

A. That it includes San Francisco, what contract we have now.

Q. The contract you have now includes San Francisco? A. Yes, includes San Francisco.

Q. And you made that agreement with Van Hoevenberg on May 29th? A. Yes.

By Mr. Resner:

There is some confusion here. I don't think you understood, Mr. Rendon. There wasn't any agreement signed for the San Francisco operations here, was there?

(Testimony of Vincent Rendon.)

A. No. But when I left there I did not sign the contract but I left my word.

Q. *We're* are not talking about what you did. We are talking about the union. The union didn't sign for the San Francisco operation this year, did they? A. No, because the companies here!

Q. They wouldn't accept the San Francisco 1939 wage scale? Is that right? A. Yes.

Q. The contract that was signed in Seattle was for the operation from Seattle, was it not?

A. No. There is a provision that what wages and conditions of San Francisco 1939 were it won't be taking away from them by signing this.

Q. In other words, if there was some work done from San Francisco which had the same wages and conditions that previously existed for San Francisco that would apply then to the operation of this port? A. Yes.

Mr. Resner: I think the best way to *it* it is by reference to the contract.

Mr. Madison: Have you got a copy of the 1940 Seattle contract?

Mr. Resner: I haven't a copy of it. As I understand it, a memorandum was to be added to that in case it could be arrived a. for the San Francisco wage scale, and that was never arrived at. [38]

Mr. St. Sure: My recollection was there was a provision *there* wages for San Francisco were still to be negotiated.

Mr. Resner: That is true, but when Mr. Rendon

(Testimony of Vincent Rendon.)

speaks of coastwise agreements here he is talking about agreements for the three locals,—Seattle, Portland, and San Francisco—where uniform wages and conditions do apply. There are many instances it does. And if there were any differences where San Francisco had superior wages and conditions those were to be separately agreed upon for the operations. Is that correct?

Redirect Examination

By Mr. Resner:

Q. Is what I say your understanding of the situation, Mr. Rendon? Did you hear what I said?

A. Yes.

Q. Is that your understanding of the situation?

A. Yes, that is my understanding.

Q. I want to ask you these additional questions. When Mr. Madison asked you these questions about the Manning Scale with regard to the operations in Seattle the union from San Francisco took the position, did it, that there was a speed up and that, therefore, the operation was undermanned? Is that what your testimony was?

A. Yes. Because previous years they was running to their machinery two hundred and fifteen can in a minute, but this year the Red Salmon and some of the Alaska Packers told me they are going to run to two hundred forty-five or two hundred sixty-five.

Q. In other words, they were going to increase their production from San Francisco and because

(Testimony of Vincent Rendon.)

you knew they were to up their production you asked for an increase of the Manning Scale:

A. For increase of Manning Scale.

Q. I want to ask you this. Did the union ever declare a strike for the present season against the companies? A. Never.

Q. The season starts in Central Alaska approximately when? The Bristol Bay season starts on the 5th of May every year? 1940? Is that right?

A. Yes.

Mr. Madison: What was this? Judicial notice?

Mr. Resner: When the season starts, May 5th. (Indicating) These are the Commission's dates.

Referee Roden: Yes. [39]

Mr. Madison: The Commission has fixed those dates?

Referee Roden: Yes.

By Mr. Resner:

Q. Immediately prior to May 5, 1940, did your union, Local No. 5, have any workers employed at Bristol Bay? A. No.

Q. When was the last time you had workers employed at Bristol Bay?

A. That is in August, 1939.

Q. August, 1939. That was when the 1939 season expired? Your contract expired?

A. Yes.

Q. And from that time down to May 5th of this year you haven't had any workers there?

A. No.

(Testimony of Vincent Rendon.)

Q. Is the same situation true of Central Alaska, Southern?

A. I don't mean Central Alaska. They might use the residents.

Q. Your people? What other operation do they engage in besides the Bristol Bay one?

A. That is Central Alaska and Chignik and Karluk. That is all we have here in San Francisco.

Q. Referring to what is described as the Alaska Peninsula operation, you send workers there every year, do you not?

A. That is, I don't know what they call that, that is the Peninsula or Chignik and Karluk—I don't know what District that is in Alaska, whether that is Central Alaska or the Peninsula, I don't know.

Mr. Paul St. Sure: We call it Central Alaska. I don't know what they do.

Mr. Resner: The Commission has fixed the dates of the industry; and, apparently, the description given by the Alaska Unemployment Commission is different from the ones we include in our grading.

Mr. Madison: They must be familiar up there with which canneries fall in which District.

Mr. Resner: That is right. I wonder if you could give us this for the Alaska Peninsula operations?

Referee Roden: Alaska Peninsula takes in Chignik. Karluk is on Kodiak Island.

By Mr. Resner:

Q. Now, referring then, Mr. Rendon, to the

(Testimony of Vincent Rendon.)

Alaska Peninsula operation, that is Chignik, prior to April 1st of this year did you have any workers employed in the canneries there? A. No. [40]

Q. When was the last time you had workers employed in that operation?

A. The last time we have there is September.

Q. 1939? A. 1939.

By Referee Roden:

Q. That is where? At Chignik?

A. Chignik.

Q. & Referring to Kodiac Island?

A. You see, in Kodiac I think that is September and in Chignik is October was the date.

Q. The Alaska Peninsula season is April 1st to September 10th, that is Chignik? A. Yes.

Q. You had nobody employed this year prior to the opening of the season, and the last man you had employed at Alaska was at the end of the last year's season? That is correct? A. Yes.

By Mr. Resner:

Q. That is true of all your operations where your union sends workers to Alaska? A. Yes.

Q. The last time you had workers of any kind was last season? You never sent them at all this season? A. No.

Mr. Resner: In 1939 whenever they stopped work. I am just referring to the seasonal periods as they are described by this Commission.

Mr. Oliver: Yes. That is what you mean? (Indicating)

(Testimony of Vincent Rendon.)

Mr. Resner: No. I mean in addition to that if it is different. The fact the last time they had workers employed in Alaska was when the last season closed, the 1939 season closed.

Mr. Oliver: Irrespective of whether that corresponds with the similar date?

Mr. Resner: Yes, I just referred to this as a matter of convenience.

By Mr. Resner:

Q. In other words, you didn't have any workers at all in the 1940 season in Alaska from San Francisco? A. (Mr. Rendon) No.

Q. And you didn't declare a strike from San Francisco? A. No.

Q. Are you willing to go now on the basis of the 1939 San Francisco agreement? A. Yes.

Q. All these men I see are members of your union?

A. Yes, they are all members of the union; and they are willing to go now or tomorrow if the companies will pay the 1939 wages and conditions. [41]

By Referee Roden:

Q. The reason you are not up there now is because the Company will not pay you 1939 wages?

A. Yes.

Q. Is that the only issue?

A. That is the only issue.

By Mr. Resner:

Q. In other words, these men are ready to sail

(Testimony of Vincent Rendon.)

tomorrow on the basis of the 1939 San Francisco wage scale? Is that right?

A. Yes, that is right.

Mr. Resner: Any other questions?

That is all unless you have some questions, Mr. Referee?

I want to offer at this time some evidence on the basis of the curtailment with regard to the present salmon season in Alaska, Mr. Referee; and, I think, these are things that we can also take judicial notice of. I don't suppose Counsel for the Packers will have any objection to having them introduced?

Regulations of the Secretary of the Interior—I only have these copies. I only have one copy of each, though. I want to point to the 1939 Regulations, Page 11, Paragraph 18, that has reference to the 60 hour closed period weekly; and on Page 12 * * *

Mr. Madison: What is the first page?

Mr. Resner: Page 11 of the 1939 Regulations, Paragraph 18 on that page running over to the top of Page 12. There is, as I say, 60 hours weekly.

And then I want on the 1940 Regulations to draw attention on Page 11, Paragraph 18, extending and enlarging the closed weekly period to 84 hours. In other words, the closed season is increased 24 hours a week. And then, on the same Page 11 of the 1940 Regulations, Paragraph 19 (b) dealing with the closing of certain fishing areas described there.

(Testimony of Vincent Rendon.)

I assume that the Commission will take judicial notice of these regulations.

I would like to introduce them into evidence at this time. They are together. One is inside the other. (Indicating) [42]

Referee Roden: Yes.

Mr. Resner: I want to call Mr. Whaley.

MR. MORRIS WHALEY,

557 Clipper Street, San Francisco, California, being duly sworn testified as follows:

Direct Examination

By Mr. Resner:

Q. Will you give us your name and address, please?

A. Morris Whaley, 557 Clipper Street.

Q. You are a member of Local 5, Alaska Cannery Workers Union? A. Yes, sir.

Q. You are Chairman of the Negotiating Union for this season, in San Francisco?

A. Yes, sir.

Q. And you have been a member of the union for how long? A. Since 1938.

Q. Were you a member of the Negotiating Committee last year? A. Yes.

Q. Now, I want to direct your attention to the negotiations here in San Francisco. You and your Committee met from time to time with the representatives of the Packers?

(Testimony of Morris Whaley.)

A. That is right.

Q. Who did you meet with?

A. We met with Mr. St. Sure and Mr. Moore.

Q. These are the Gentlemen across the table from me? The attorneys for the Packers?

A. Yes, sir.

Q. Can you recall when the first meeting was?

A. Well, sometime in March. We started in March, and we had four or five meetings. I think there was only two meetings there where we discussed mostly Manning Scale and general conditions.

Q. Discussed mostly Manning Scale?

A. And general conditions.

Q. Manning Scale and general conditions?

A. Yes.

Q. How many meetings did you have here in San Francisco with your local?

A. I would say five or six.

Q. And, as I understand the situation, the question of the wage negotiations were transferred to Seattle, were they not, where an attempt was made to get a coastwise agreement?

A. That is correct. We were merely handling the personnel and the conditions down here.

Q. That is right. Now then, as I understand it also, what was the position of your union with respect to wage scales for this season?

A. Everything relating to wages we had turned over to the Seattle Committee. [43]

(Testimony of Morris Whaley.)

Q. With what instructions? What did the union want this year?

A. Well, we went up. There was a deadline issued on the Chignik and Karluk operations by Mr. St. Sure, and we went over there to discuss a memorandum of agreement to take these workers up to Chignik and Karluk. And we had offered the 1939 San Francisco agreement to apply to these workers—nothing worse than that!

Q. Nothing less than the 1939 wage scale from San Francisco? A. Yes.

Q. Did you offer the negotiators, the representatives for the operators, the 1939 San Francisco wage scale? A. That is right.

Q. Can you tell us when and where that was who was present?

A. Well, we had our attorney with us, and we went down.

Q. You are referring now to Mr. Anderson, are you?

A. Yes, George Anderson. And we went down there, and the Packers.

Q. When you say you went down there, you went to their office on California Street?

A. To Mr. St. Sure's office, yes. And we went in there to discuss. And they had told us they were not shipping any men, so we figured there was no necessity for a memorandum of agreement; so, the result was we just didn't sign any.

Q. At that meeting did they say they weren't going?

(Testimony of Morris Whaley.)

A. None of our men from San Francisco were going.

Q. They said they didn't intend to send any men from San Francisco?

A. That is right.

Q. At that time did you offer the San Francisco wage scale to Mr. St. Sure? A. Yes.

Q. Who else were there for the Packers?

A. Mr. Moore.

Q. And yourselves? Who was there?

A. Well, the complete Negotiating Committee—Brother Noland and Brother Acosta.

Q. Vargas? A. And Vargas.

Q. Cano? A. And Cano.

Q. And Livingston? A. Livingston.

Q. And Wellman?

A. And Wellman, yes.

Q. You heard Mr. Rendon's testimony with regard to whether a strike situation exists. Has the union called a strike against the Packers?

A. Well, we haven't even discussed the agreement. All we were doing was negotiating, like I say, personnel and conditions. [44]

Q. In other words, you were trying to get an agreement and you couldn't get it? Is that right?

A. That is right.

Q. What is the attitude of the men about going to Alaska?

A. Well, the men are tickled to death to go on 1939.

(Testimony of Morris Whaley.)

Q. On the 1939 wage scale conditions?

A. Yes.

Q. And are ready to go today or tomorrow?

A. Correct.

Q. And that is the position of the union, too?

A. That is right.

Q. Were you at a meeting on March 27th at 230 California Street with Mr. Moore and Mr. St. Sure?

A. March 27th? Yes, that was the meeting.

Q. Mr. Moore and Mr. St. Sure. Do you recall any conversation at that time? Any statement by Mr. St. Sure with respect to the curtailment affecting the operations?

A. Well, I know we asked Mr. St. Sure several times just how many canneries they intended to operate and the amount of men they would require for these various operations, and he stated, he wasn't ready at this time, he couldn't say they were going to operate at all; and it depended—I forget just what the words were, but the general contention was that the operations was called off for this year. That was the impression we got all the time.

Q. At this particular meeting on March 27th was there any statement by Mr. St. Sure on the subject of the curtailment affecting the operations, that you recall?

A. I made some statement there, but I just don't recall the words.

Q. Who was the Recording Secretary for your Committee? A. Brother Wellman.

(Testimony of Morris Whaley.)

Q. Is he here?

A. I don't know whether he is or not. I can get him if you want?

Q. We can call him later. He took the minutes. Did the representatives of the Packers ever say that they were going to Alaska, in connection with any of these negotiating meetings you had?

A. Well, at no time did they ever give us anything definite. They had sent a few letters to the effect if we didn't take this, get together by such and such a date, why, the operations were going to be cancelled.

Mr. Resner: I think that is all.

Cross Examination

By Mr. Madison:

Q. Mr. Whaley, you weren't in Seattle? You didn't attend any [45] of the meetings in Seattle?

A. No, sir.

Q. Your participation was here in San Francisco? A. Yes.

Q. How many times do you recall, in a general way, you met with Mr. Moore and Mr. St. Sure? Five or six, did you say?

A. Approximately.

Q. Now, did you discuss the wages here at any time? I think you mentioned something about a meeting, I didn't get the date, where you discussed wages?

A. This was on the memorandum agreement.

Q. This was on the memorandum agreement?

A. In other words, they had sent us a notice

(Testimony of Morris Whaley.)

we had to get together by such and such a time or the Chignik and Karluk operations were off. We went over there to—we knew we couldn't get through with the general agreement by then, so we went over to sign a memorandum agreement.

Q. Your idea was you would sign some kind of temporary agreement so as to permit the operations to go forward up to Alaska within the time specified in these letters. Is that it? A. Yes.

Q. What I don't quite understand is whether the negotiating were being conducted at the same time in Seattle?

A. Seattle was handling all the agreement—wages and general agreements, coastwise agreement.

Q. Was it the union's request or the employers' request that the industries requested that the wages be handled in Seattle as against being handled here, as the way they had been in the past years, do you recall that?

A. I recall that. Well, they just got together. The industry was sent a letter, I understand, that we were going to negotiate on a coastwise basis and the companies agreed to it.

Q. And you proceeded? The Committee went up there and proceeded to negotiate?

A. Yes.

Q. This Mr. Rendon, who was on the stand before you, went up there? A. Yes.

Q. And you had a Brother Woolf go up there, did he? A. Yes.

(Testimony of Morris Whaley.)

Q. And they had a negotiation up there?

A. Yes.

Q. Then, when you received the notice, a letter here, from the Industry, from Mr. St. Sure, to the effect that unless something was done before a certain date it looked like the operations wouldn't go forward, then you did come in and discuss wages with Mr. St. Sure. Is that it?

A. No, we merely stated that we could go up under a memorandum of agreement, providing we didn't get anything worse than 1939. [46]

Q. That is what I am getting at. In other words, this memorandum agreement proposal you accepted was there would be a bottom or floor on the wages which wouldn't be any worse than the 1939 agreement. That if something better was negotiated in Seattle for you you would get the benefit of that, too. Was that about the size of it?

A. That was the general understanding.

Q. So, when you said that was your general understanding of the proposal, you mean that?

A. Yes.

Q. So, when you said and when Mr. Rendon said you wouldn't get any worse than 1939, or at least 1939, wages what he meant was that would be the least they would pay. And if they would pay anything more it would be subject to future negotiations. That was about it?

A. In 1939 we had a similar condition and we signed a memorandum of agreement to go up to Chignik and Karluk under certain conditions.

(Testimony of Morris Whaley.)

Q. That you would get the Bristol Bay pay, or something like that?

A. No. We signed nothing worse than 1937. And, on the basis of that, if anything better were negotiated in the present year that would apply to the Chignik and Karluk crews.

Q. Yes. And that year, as I recall it, Seattle had an arbitration up there and something better was given to them after they got up?

A. Yes, fact finding.

Q. And that was the proposition the memorandum agreement your Committee proposed here to Mr. St. Sure was you make a tentative or memorandum agreement. That it be nothing less than San Francisco 1939 wages with the understanding that if more was negotiated later on you would get the benefit of any additional amount that could be negotiated?

A. We were merely doing this so our men wouldn't be deprived of work at Chignik and Karluk; rather than hold the expedition up we were willing to go on the 1939 wages and conditions.

Q. Well, let me get that straight again. Were you willing to go finally on the basis of the 1939 wages and conditions, or did you agree to go on the basis that would be the bottom, that would be the floor, you might get more?

A. The memorandum of agreement was to read this way, that the wages and conditions would not be worse than 1939.

(Testimony of Morris Whaley.)

Q. That is the way it was to read?

A. Yes.

Q. And that was substantially all it was to say?

[47]

A. Well, eventually, if they negotiated in Seattle a few additions to this, well, it would apply to that.

Q. You would get the benefit of those?

A. Yes.

Q. That was my understanding. Did you make that proposition verbally to Mr. St. Sure?

A. Well, we discussed it and the fact that they cancelled the operations due to some other things, I don't know just what were their reasons. But they had arrived at the fact they weren't going to take any of our men.

Q. That is, at Chignik and Karluk.

A. That is right. So, if they weren't going to take any of our men, there was no necessity for a memorandum of agreement. We told Mr. St. Sure that.

Q. So, no offer was made at that time?

A. We?

Q. Did you make an offer? A. Yes.

Q. You made that offer verbally or in writing?

A. Well, we have minutes of the meetings.

Q. I mean, to Mr. St. Sure?

A. That is right.

Q. Verbally?

(Testimony of Morris Whaley.)

By Mr. Resner:

Q. Did you tell it to him or did you write it to him? A. Orally.

By Mr. Madison:

Q. And that was what date, approximately?

A. That was about the dead line for the Chignik and Karluk operations.

Q. Before or after?

A. No, we stayed there a couple of meetings, right in there. And this was before the dead line, of course, we were trying to get the Chignik and Karluk bunch away.

Q. When you speak of the dead line do you speak of the date Mr. St. Sure stated in his letter to the union the deal had to be closed before that date?

A. Or else the operations were off.

Q. And is it before that date he told you, then, the operations were off anyway?

A. Well, they couldn't get together with somebody, I don't know who it was; and, naturally, we didn't have to sign any memorandum agreement.

Mr. Madison: That is all.

Redirect Examination

By Mr. Resner:

Q. I want to ask you with respect to Mr. Rendon's testimony as to your union having employes in Alaska for those operators at any [48] time during the present season?

A. No, we haven't.

(Testimony of Morris Whaley.)

Q. The last time you worked up there or your men worked up there was last season, as Mr. Rendon testified? A. That is right.

Q. There is no strike situation in Alaska at the present time so far as your union is concerned?

A. No. Our agreement was terminated at the end of last season.

Q. This year you were trying to get this new agreement, as you have testified?

A. That is right.

Examination by Referee Roden:

Q. The contract is made for just one season, isn't it? A. Yes.

Q. Now, you say, Mr. Whaley, that the operators at Karluk and Chignik had decided not to take any of your men. That means men from San Francisco? A. That is right.

Q. Now, how do you know that they had decided not to take any men from San Francisco?

A. Well, this dead line was for——

Q. Karluk and Chignik?

A. I don't know the dates on this. The dead line was around May 3rd, I think it was.

Mr. Resner: I have a letter which I am going to offer in evidence later, Mr. Referee, dated April 22nd, written and signed by Mr. Moore, where he said, "Those operations have been abandoned because of inability to reach an agreement with the union."

I am going to offer a series of letters in evidence.

(Testimony of Morris Whaley.)

A. (Mr. Whaley): But, in answer to this question, our men weren't going up on the first boat, you see. We figured the men were going to get up on the first boat and, naturally, we wanted them to get away as quick as possible; so, we were willing to sign this memorandum of agreement.

By Referee Roden:

Q. And they wouldn't take that?

A. No. None of our men were going so we, naturally, figured the agreement was off.

Q. And what did they say about this memorandum agreement?

A. Well, none of our men were going on the first boat which, I think, was the Cherokoff. They said "Well, your men are not going up on there, but they will be governed by what is ultimately signed in Seattle." [49]

Q. Did they say why your men were not going up?

A. They claimed they might lay around there for a month, or something. I don't know what reason they give. In other words, our men weren't to go on the first boat, so we had no necessity to sign this agreement.

Q. And all you were negotiating about down there was about the manning of the different lines?

A. That is right.

Q. Anything else?

A. And general conditions.

Q. That means living conditions?

A. That is right.

(Testimony of Morris Whaley.)

Q. Was there any serious dispute about manning the different lines?

A. No. We never had any dispute. We discussed with the various Superintendents, that is Mr. Kellogg and Mr. Jones, the personnel in the Chignik and Karluk canneries; and we went over them in detail a couple of times and we had nothing serious. They had some new machinery they were going to use in some of their other plants. We didn't know just what was the nature of this machinery—how many men it would require.

Q. Did you determine in your union meetings the number of men that should be employed in any particular cannery at any particular line?

A. We discussed that each year with the Packers.

Q. You discussed that with them. Was there any issue about that last year?

A. Not to my knowledge.

Q. Now, you talked about living conditions also?

A. Well, there were a few minor things we wanted fixed up around the bunk houses, not nothing serious, though. The Packers never argue much with us about those things.

Q. Now, is it your impression that the operators here in San Francisco discriminated against you in favor of the employees in the Territory?

A. Now, my whole understanding of the whole thing since we have started negotiations was that the operations were off. I somehow felt that.

(Testimony of Morris Whaley.)

Q. What made you feel so?

A. Well, on account of this curtailment business. There is a lot of talk about curtailment, and we on the Negotiating Committee felt that the Packers didn't really intend to go.

Q. How do you know whether or not they have gone to Karluk?

A. Well, Karluk and Chignik.

Q. They haven't gone to Karluk and Chignik?

A. No, they haven't sent anybody. [50]

Q. Sent nobody from Seattle, either?

A. No.

Q. Why didn't they send anybody to Karluk from Seattle?

A. As I understand it, the plants were just closed down. They are not going to operate this year at all. That is the understanding we have.

Q. Do you know the reason why not?

A. Well, I understand there is a curtailment. That is the understanding we have.

Recross Examination

By Mr. Madison:

Q. Could I ask a question apropos of the last question? The Examiner asked you, Mr. Roden asked you, if there was any discrimination against your union on the part of the operators. Well, there has been no contentions of that kind at all, has there, as far as discrimination is concerned?

A. Well, the fact we didn't go to work.

(Testimony of Morris Whaley.)

Q. Well, nobody else, these operators have hired nobody else in your place?

A. Not to my knowledge.

Q. The Members of your union manned their entire operation? That is, the operation you generally manned, last season? Did you not?

A. We didn't send any this year.

Q. Last season? A. Yes.

Q. And the season before? A. Yes.

Q. And the last two seasons before that? That is, 1936, 1937, 1938 and 1939? A. Yes.

Q. You have always had a contract, your union, with each one of these three canneries, haven't you, those four years? A. That is right.

Q. And under that contract those men have gone up there each season and worked? Done the cannery workers job called for by the contract?

A. Yes.

Q. And now, this year, these negotiations took place and upon your suggestion, according to a letter, you took the wage angle of the thing up to Seattle and negotiated it up there with a representative of the industry. That is correct, isn't it?

A. Yes.

Q. Some of the other conditions were still negotiated down here, that is, the Manning Scale and these bunk conditions and other working conditions for the men, living conditions. Now, you never heard, did you, of any wish or any desire or any effort on the part of the operators to hire any men out of Seattle to go? There have been no

(Testimony of Morris Whaley.)

sessions of that kind you ever heard of, was there?

A. You mean?

Q. Of the operators here to hire men out of Seattle? A. No. [51]

Mr. Resner: You mean, to take the place of the San Francisco men who have ordinarily done this work from year to year?

Mr. Madison: Yes. I am only asking that for Mr. Roden's benefit, because he seemed to have some feeling, possibly, moving the thing to Seattle there had been some discrimination.

By Mr. Madison:

Q. Your answer is you never heard of any session of that kind?

A. (Mr. Whaley): No.

Q. And, as a matter of fact, if the Packers had suggested or allowed men to be hired out of there you wouldn't have allowed those men to go, would you?

A. Well, in previous years we have always negotiated an agreement to go to Alaska and this year we didn't go to Alaska; so, we don't know just what our status is.

Q. You don't mean to suggest here that the Cannery Workers Union of the Seattle Local would have sent men up there to take the place of men in San Francisco? You don't concede anything of that kind would have been permitted by the union, do you?

By Mr. Resner:

Q. Suppose the canners had tried to man the

(Testimony of Morris Whaley.)

operation that ordinarily is manned from San Francisco with Seattle people? What would the position of your people in Seattle have been?

A. We wouldn't like it.

Q. In addition to the fact you wouldn't like it, would the Seattle people have gone to Alaska?

A. I can't answer for the Seattle people.

Q. The Seattle Local would have to decide that for itself.

A. (No answer.)

Mr. Madison: I guess that has been cleared up. I don't know whether to ask this of Counsel or this witness, but it is very clear, Counsel, the curtailment to which you have reference to only applies to Bristol Bay and doesn't apply to Chignik or Karluk.

Mr. Resner: It applies, as I understand it—the Regulations are there. They speak for themselves.

Mr. Madison: Do you know anything about that? About the curtailment? [52]

Referee Roden: The regulations, themselves, speak for that, of course.

Redirect Examination

By Mr. Resner:

Q. Let's get this straight, Mr. Whaley, as a matter of fact, year to year the San Francisco people generally go back to the same canneries they worked before. Some canneries are worked out of San Francisco, certain out of Portland, and certain out of Seattle? A. That is correct.

Q. And the three unions are all members of the

(Testimony of Morris Whaley.)

International Union, United Cannery Workers, Local No. 5 of San Francisco, Local No. 7 of Seattle, and what Local in Portland? A. No. 22-6.

Q. They each have canneries where they go from year to year? A. That is right.

Q. And you have always negotiated your own agreement here in San Francisco for your San Francisco operated plants?

A. That is right.

Q. This year you tried to get a coastwise agreement and so the wage proposition and other matters were turned over to the Negotiations Committee in Seattle to determine with the industry?

A. Yes.

Q. There were some matters peculiar to San Francisco left here to be negotiated in a memorandum agreement to be attached to the main agreement, if it could be arrived at? Is that right?

A. On the coastwise negotiation. You would need a Committee here to determine the Manning Scale, because the Superintendents of the various canneries have to have certain amount of men for their operations, and that it negotiated here, regardless.

Q. Regardless of what is done there. But you wanted to get uniform coastwise conditions on the question of wages and general conditions?

A. Yes.

Q. Leaving Manning to San Francisco negotiations? A. That is right.

Q. And then the operators up in Seattle offered

(Testimony of Morris Whaley.)

the Seattle wage scale for the whole industry, no matter whether the canneries were operated from San Francisco or Seattle or Portland?

A. Yes.

Q. And you instructed your Negotiating Committee up there to hold off for the San Francisco wage scale, at least?

A. That is right, at least.

Q. And you offered to negotiate or agree upon the San Francisco wage scale in a separate memorandum agreement. [53] That is the meeting you referred to held sometime in the latter part of—when was that with Mr. St. Sure?

A. Right around the dead line there, I don't know the date.

Referee Roden: March 27th, I believe.

By Mr. Resner:

Q. You wouldn't arrive at that agreement anyhow?

A. Well, they weren't going to send any of our men.

Q. They told you there wouldn't be any operations from San Francisco, and you didn't go to Karluk or Chignik and you can't go to Bristol Bay? A. Apparently not.

Q. But you are willing to go on the basis of the 1939 agreement. A. (No answer).

Mr. Resner: That is all.

Recross Examination

By Mr. Madison:

Q. I would like to clear this up. If I misun-

(Testimony of Morris Whaley.)

derstood it, I am sorry. Now, I und rstand you came in there about the time you call the dead line here, and you had a meeeting with Mr. St. Sure. And at that time you were prepared, according to your statement, to submit a memorandum agreement, that is right? A. Yes.

Q. That you have nothing less than the 1939 San Francisco wages?

A. That was for the purpose of getting Chignik and Karluk.

Q. That is what date? You fix at what date, about?

A. Well, the dead line was May 3rd, wasn't it?

Mr. Resner: That was the dead line handed down by the canners, the operators.

By Mr. Madison:

Q. Certainly. It wasn't March 27th, was it, you went in there?

A. We were in there before figuring if our men were going to catch the first boat they had to sign this memorandum agreement, because we knew the general agreement was going to take maybe months to negotiate.

Q. This meeting you had where you went in and made an offer of a memorandum agreement, that wasn't March 27th, was it?

A. I can get the dates.

Mr. Madison: Show him the letters. It wasn't March 27th.

Mr. Resner: It is going to take me a while to find. [54]

(Testimony of Morris Whaley.)

By Mr. Madison:

Q. If the date you call the dead-line date here on Chignik and Karluk was April 10th, then this meeting that you have reference to was on or about April 10th, wasn't it?

A. No, it was before this dead-line.

Q. How many? Day or two?

A. Well, it was in time to get the men away.

Q. Now, at that time what you found out was, wasn't it, that they had planned not to send your men on the first boat? Wasn't that it?

A. The understanding they weren't going to send our men.

Q. On the first boat?

A. No. We asked them specifically. If our men were going we were willing to sign a memorandum of agreement, but if our men weren't going there was no necessity for it.

Q. Were you talking about going at all, or going on the first boat? A. Going at all.

Q. So, your understanding of that meeting that you speak of was that you were told at that time the men were not going at all to Chignik or Karluk?

A. They didn't say that. They said that the reason we brought up the question of this agreement in the first place was the question of hurry. In other words, there was a deadline set and we wanted our men to get away, and we rushed down there with the attorney to talk to Mr. St. Sure to

(Testimony of Morris Whaley.)

draw up this agreement, providing our men were going to go.

Q. Providing there was going to be any operation at all, you mean?

A. That was the understanding we had, that our men weren't going to go.

Q. When you say your men weren't going to go, your understanding was nobody was going to go to Chignik or Karluk?

A. Well, the general understanding was that they weren't going to take cannery workers; so, therefore, we figured the operation was off.

By Referee Roden:

Q. What was that you said? I didn't get you.

A. When they give us this deadline, when we rushed over there, we rushed up and got our attorney and went down and tried to sign a memorandum of agreement, figuring that if our men were going to go we wanted to get them away; and at that meeting it seemed there was something with some other people went wrong or something. Some of the other unions hadn't signed, or something, and they told us at that time our men weren't going. So, we just didn't. There was no necessity for signing the [55] memorandum of agreement.

Q. And that was about how long before the deadline?

A. Well, it was in plenty of time to get away.

Q. You know whether the Karluk canneries and Chignik canneries are running at all this year?

A. No.

(Testimony of Morris Whaley.)

Mr. Resner: I don't think the witness is qualified to answer that question, Mr. Referee?

By Referee Roden:

I am asking if he knows. He can answer that question He can answer yes or no, can't he? If he knows he can say.

A. I don't think they are.

Q. You don't know? A. I don't know.

(Remarks were made off the record.)

Q. What I am trying to get at is this, Mr. Whaley. Did you at any time have the understanding from any interview you had with any of the operators that no men would be shipped from San Francisco?

A. Yes. That was the general feeling we had all the time, that the whole thing was off. That was the general understanding of the members and of the Committee. As a matter of fact, we made a report that the Packers don't seem to want to go this year.

Q. And can you tell me in a few words how you arrived at that opinion, that idea?

A. Well, in previous years when we discussed the agreements we went over and went down and discussed the Manning Scale right down the line; and, well, we went into the thing in little details and we discussed little bits of things. And we discussed quite a long time. And, this year the negotiations weren't conducted that way. They were, well, we discussed for the Manning Scale on several occasions and Mr. St. Sure didn't know. We

(Testimony of Morris Whaley.)

asked them how many canneries he is going to operate and how many men he was going to require. They didn't know until one time they brought in the Superintendent of these two canneries, Chignik and Karluk, and they come in and we discussed Manning Scale. And we figured there might be a possibility we would go. But right after we discussed the Manning Scale nothing else happened and the deadline was approaching, getting closer and closer, and the men got to worrying about the work, you know. And, well, we never heard anything more until we got the deadline.

Q. Let me ask you another question. These negotiations that were [56] carried on, did they leave upon you the impression that they were being carried on in good faith to come to an understanding or simply as a kind of stall or put off proposition?

A. Well, personally, I figured that the Packers weren't going to go. I had that feeling all the time. That was my personal feeling.

By Mr. Resner:

Q. Will you answer the Referee's question whether or not it was your opinion these negotiations were conducted in good faith by the Packers or whether it was a stall?

A. Not like previous years. Well, it didn't seem like we were getting down to brass tacks.

By Referee Roden:

Q. Can you answer my question yes or no?

By Mr. Resner: Were the negotiations conducted in good faith?

(Testimony of Morris Whaley.)

A. Well, so far as I know. I would say so far as we were concerned the general opinion was that the operations were off.

By Referee Roden:

Q. Do you think it was just to keep you guessing?

A. Well, I wouldn't be a bit surprised.

Q. Did you ever make a report of that kind to your organization?

A. Well, the membership just before the deadline of the Chignik and Karluk operations kept asking questions what is happening on the Chignik thing, and we told them, "Well, apparently, the Packers don't want to go." I don't know what the conditions were with the other unions in the industry, but with us we had been over there trying to get these Manning Scales—and until we get Manning Scales we know we are not going.

Q. What happened with reference to Bristol Bay, if anything?

A. Well, Bristol Bay, that was all handled in the coastwise agreement. Of course, if they were going to Bristol Bay, they would discuss the personnel with us.

By Mr. Resner:

Q. You folks didn't sign for Bristol Bay?

A. No. We had no authority to sign anything outside of general conditions.

Q. They are not taking any of your men from Bristol Bay, are they? A. No.

(Testimony of Morris Whaley.)

Q. Let me ask you this, Mr. Whaley. The wage scale for cannery workers is the same for Seattle and Bristol Bay, is it not? A. Yes.

Q. And are the conditions different? Are there any conditions different?

A. No. To my mind I don't think they are.

[57]

Q. Well, substantially, wage conditions and general conditions are the same for both San Francisco and Seattle for Bristol Bay?

A. I have never been at Bristol Bay. I don't know.

Q. The agreement will speak for itself. But you are Union Local 5 and Local 7 is in Seattle?

A. Local 7, yes.

Q. Local 7 is in Seattle. But there aren't any men going from San Francisco to Bristol Bay?

A. No.

Q. And the men are willing to go to Bristol Bay on the same conditions as Seattle, are they not?

A. The men here will go to Bristol Bay on the 1939 agreement.

By Mr. Madison:

Q. 1940 he asked. You said they would go on the same. You mean that Local No. 5 will go on the same conditions as Local No. 7?

Mr. Resner: The same wage conditions.

By Mr. Madison:

Q. The same conditions and contract? I don't know whether they will or not. Will you?

(Testimony of Morris Whaley.)

A. (Mr. Whaley) What was the question again?

By Mr. Resner:

Q. Mr. Madison, you can ask him that. I want to ask him this. What conditions would your people go to Bristol Bay on? That is the question I want to ask you. A. Well, 1939.

Q. 1939 San Francisco agreement?

A. That is right.

Q. But nobody is going from San Francisco to Bristol Bay, so far as you know?

A. We have been notified to the effect they are not going.

Q. That the operation is off.

A. (No answer.)

By Mr. Madison:

Q. Now, I will ask that question. Will your men go to Bristol Bay on the same conditions as the Seattle 1940 agreement?

A. As ultimately signed in 1940?

Q. Yes?

A. Well, I don't even know what they signed up there.

Q. Has there been any discussion about going on those conditions that you have heard?

A. Well, that was the whole contention was to sign a coastwise agreement.

Q. Then, you don't know whether they will go on that basis or not, because you don't know what the conditions are?

(Testimony of Morris Whaley.)

A. As of 1940? No, I don't.

Q. Let me ask you this. So far as in San Francisco the wage and working conditions of 1939, 1938, and 1937 they were substantially [58] the same for Bristol Bay as they were for Central Alaska?

A. Generally they are about the same.

Q. In other words, the same, substantially the same so far as San Francisco is concerned. Now, so far as people who went from Seattle were concerned, those who went to Bristol Bay and those who went to Central Alaska went on the same terms and conditions, didn't they?

A. No, wage differential between Central Alaska and Bristol Bay.

Q. There was a wage differential?

A. That is right.

Q. Now, so far as San Francisco and Seattle are concerned, so far as Local No. 5 and Local No. 7 are concerned, hasn't Local No. 7 always had a lower wage scale than Local No. 5?

A. For the southern, yes.

Q. For the southern. In other words, these operators here have had to pay higher wages than the Seattle operators?

A. They have in the past year.

Q. And isn't that true of Bristol Bay, too?

A. No. Bristol Bay wages are the same.

Q. Seattle and San Francisco wages are the same? A. Yes.

Q. And when we have been discussing it, the same is true of each year, 1939, 1938, and 1937?

(Testimony of Morris Whaley.)

A. Well, I would have to get the agreements for any thing but 1939. I know the 1939 wage agreements for Bristol Bay out of San Francisco and Seattle are the same.

Mr. Madison: That is all.

Referee Roden: Any further questions?

That is all.

Mr. Resner: Mr. Noland.

MR. WILLIAM NOLAND,

2772 Shasta Road, Berkeley, California, being duly sworn testified as follows:

Direct Examination

By Mr. Resner:

Q. You are a member of Local No. 5, Alaska Cannery Workers Union? A. Yes.

Q. You were a member of the Negotiating Committee this year? A. Yes.

Q. You were on the various meetings with Mr. St. Sure and Mr. Moore, with the Packers?

A. Yes.

Q. Will you answer this question in respect to the negotiations held? Is it your opinion the negotiations were held in good faith or not?

A. I would say from what I saw in the negotiations they weren't held in good faith. [59]

Q. They what?

A. They were not held in good faith.

Q. Why do you say that?

(Testimony of William Noland.)

A. In the first place, we introduced our 1940 contract here through a misunderstanding. At the first meeting Mr. St. Sure told us, "Well, I don't know a thing about the conditions in Alaska. I am unfamiliar with them and I will have to take this contract back to the Packers. But, in the meantime, we might run down through the clauses and compare them with 1939 wherein they were any changes."

And we did that. We asked him for another meeting and I would say, possibly, a week elapsed before we were called. Then, we discussed the 1940 contract again. The answers to the different sections in the different clauses was yes or no. There was no opportunity to discuss the merits of these clauses. And I would say that 80% of the answers were no. And evidence that we offered in argument in favor of these clauses, notes were taken on these, he said, "Well, I will have to take these back to the industry and get their answer on it. I am in no position to say whether it is acceptable or not." And so that was the result of the second meeting.

Then, we informed him that we weren't negotiating wages and working conditions in San Francisco. That would be carried on in Seattle. And that was perfectly agreeable to the industry. At further meetings, of course, we discussed nothing but Manning Scale and living conditions. And those were carried on agreeably. We had no difficulty in those negotiations at all. But I can say

(Testimony of William Noland.)

that in negotiations with other unions that negotiations were carried on in the same way as our first two meetings with them; that their answers in regard to any section or any clause was either yes or no, and negotiations were going on very slowly. And at the time they had issued a dead-line for Chignik and Karluk on the 3rd, with the dead-line of the 10th, they hadn't negotiated to any extent with any of the unions. And they gave them only seven days to reach agreements with about eight different unions in San Francisco; and they couldn't possibly meet with these different unions. And they didn't meet with them more than one time at any time in that one week. With the Ship Clerks and Stewards it might have been two meetings, I don't know, but it was practically impossible to reach an agreement with eight unions in a period of a week.

I would say, on that basis, negotiations were not carried on in good faith in San Francisco. [60]

Q. You have heard the testimony of Mr. Whaley and Mr. Rendon, who are also members of the Negotiating Committee? A. Yes.

Q. Can you corroborate the statements and testimony they have given? A. Yes sir, I can.

Q. Is there anything you want to add to what they have said?

A. Nothing I can think of, unless you want to ask a specific question?

Mr. Resner: Nothing at this time.

Any questions, Mr. Madison?

(Testimony of William Noland.)

Mr. Madison: Yes.

Cross Examination

By Mr. Madison:

Q. Now, you have been on this Negotiating Committee quite a bit, haven't you?

A. Well, just this one year.

Q. This is the first year you have gone up?

A. Yes.

Q. You say you were under the impression negotiations were not carried on in good faith?

A. Yes, sir. That is right.

Q. Did you express yourself to that effect at any of the meetings you attended?

A. I don't think so. I don't think I ever told Mr. St. Sure.

Q. Did you express yourself to any of the other members of the Committee to that effect?

A. Yes, sir.

Q. When?

A. Well, I would say so at numerous times. We met daily. I don't know how many times I said that, but the entire Committee had that general impression.

Q. Did you make a definite statement to that effect that you thought Mr. St. Sure wasn't carrying on his negotiations in good faith?

A. Yes, sir. I made that statement many times.

Q. Had Mr. St. Sure ever negotiated this type of contract before, so far as you knew?

A. He admitted, himself, that he had never negotiated a contract for Alaska Salmon Operations.

(Testimony of William Noland.)

He knew nothing about the industry. I believe, also, that the same statement will be found in a letter he wrote to us.

Q. Have you any reason to doubt the truth of that statement?

A. Well, if he makes that statement, why, I would be inclined to believe him. Why shouldn't I believe him?

Q. I don't know why you shouldn't believe him. I just ask you if you had any reason to doubt that statement? A. No. [61]

Q. Then, you believe he did not know a great deal about this industry?

A. That is correct. He said he didn't.

Q. Now, as I understand it, wages and working conditions were to be negotiated in Seattle?

A. That is correct.

Q. And so far as you know, they were negotiated in Seattle? A. Yes, sir.

Q. Did you attend any of the negotiations up there? A. No, sir.

Q. Have you got any impression as to whether Mr. Van Hoevenberg and Mr. Ellsworth conducted their negotiations in good faith?

A. The only communications we received from up north stated on numerous occasions negotiations up north were not being carried on in good faith, and they were using stalling tactics. We have letters to that effect from up north.

Q. Yourself, you weren't present at any of these meetings up there? A. No.

(Testimony of William Noland.)

Q. Now, the matters you discussed down here with Mr. St. Sure were matters relating to the Manning Scale, were they not, primarily?

A. That is true, other than the first two meetings which I attended at that time which did discuss the proposed 1940 agreement. That was just on two meetings, otherwise.

Q. You testified the major discussion down here, the major things in discussion, were the Manning Scale?

A. Manning Scale and living conditions.

Q. Did you have any particular disputes about the Manning Scale?

A. Well, I would say in our discussions with Kellogg, Jones, and Halsey of Red Salmon, I would say we were very successful. There were no disagreement. We more or less orally agreed to a Manning Scale, but nothing ever definite was given to us.

Q. You had no difficulty at that time reaching an agreement. A. No.

Q. I see. It wasn't definite, they more or less orally agreed?

A. And said they would seriously consider the changes we proposed in their proposed Manning Scale.

Q. What else was discussed down here with Mr. St. Sure and Mr. Moore?

A. Of course, we did discuss a memorandum of agreement.

Q. Outside of that? A. Nothing else.

(Testimony of William Noland.)

Mr. Madison: No further questions.

Mr. Resner: That is all. [62]

I want to call Mr. Vegen.

MR. ANDREW VEGEN,

49 Clay Street, San Francisco, California, being duly sworn testified as follows:

Direct Examination

By Mr. Resner:

Q. Will you give us your name and address, please?

A. Andrew K. Vegen, 49 Clay Street, San Francisco.

Q. Mr. Vegen, you are the Secretary of the Alaska Fishermen's Union?

A. That is right.

Q. That represents fishermen all up and down the west coast who fish in Alaska from season to season? A. Yes.

Q. And you have been Secretary of the Union for how long? A. Since 1934.

Q. And during the different seasons when yearly contracts have been negotiated have you done the negotiations, among others, for your union?

A. Yes. We have a Committee elected from the members and, of course, I always go along with them.

Q. You are always on the Committee?

A. Yes.

(Testimony of Andrew Vegen.)

Q. You were on the Committee this year?

A. Yes.

Q. Now, as I understand it, there are a number of unions which send men to Alaska every year from the coast states? A. Yes.

Q. Your union, the Fishermen's Union, Alaska Cannery Workers Union, Maritime Cooks and Stewards, Firemen, Sailors, and all the other unions? A. Yes.

Q. And each of them carry on their separate negotiations with the operators? A. Yes.

Q. And then they deal collectively, do they not, through the District Councils of the Maritime Federation of the Pacific?

A. Yes, we have done that for the last few years.

Q. And you did that this year? A. Yes.

Q. Now, with respect to the negotiations carried on by your union, with the Packers, can you give us your opinion as to whether or not these negotiations were carried on in good faith or not?

A. Well, I will say it wasn't.

Q. It was not? A. It was not.

Q. And what do you base that opinion on? [63]

A. Well, probably the reason I don't think the companies had any intention to operate, that is, companies in San Francisco.

Q. Can you tell us why you came to that conclusion?

A. Probably different reasons for that. One is the Bureau of Fisheries put some very drastic re-

(Testimony of Andrew Vegen.)

strictions on the regulations up there. They closed part of the fishing grounds and added some more closed periods during fishing time, you see; so, it would make it kind of unprofitable for them to operate it this year.

Q. You have reference to the regulations put out by the Secretary of Interior? They are in evidence here. During 1939 and 1940 the closed season, closed areas and restricted fishing weeks?

A. Yes.

Q. And the opinion you are expressing here is this curtailment would have increased the cost of operations and, therefore, you would not operate for that reason?

A. I look at it this way. The companies, at least, look at it this way. They wouldn't be able to go up and put up a good pack because of the restrictions on the regulations; and when you close part of the fishing grounds you can't fish there, and put an added twenty four hours a week where you couldn't fish, naturally! And it is a cycle year, anyway. What you call a cycle year. It is a poor year expected this summer.

Q. This year would be a poor year?

A. Yes, that is what they expect.

Q. You, yourself, fished in Alaska for many years, did you not, Mr. Vegen? A. Twenty-five years.

Q. And this is what they would consider to be a poor year?

A. Well, what they call a cycle year—comes around every fifth year.

(Testimony of Andrew Vegen.)

Q. Five years ago the fishing grounds were closed in Alaska, were they not?

A. Practically, yes. It was very limited in 1935.

Q. That was because of regulations put out by the Bureau of Fisheries? A. Yes.

Q. And at that time was any operations undertaken by San Francisco?

A. No. They sent some ships up there from San Francisco, but it was very little fishing. The season was open up there on the 4th of July—and only one company packed, Libby, McNeil, from Seattle.

Q. But the San Francisco operators didn't put up any pack that year??

A. Put up a few cases, but not much. They were not prepared to do canning.

Q. This year with regard to the restrictions on the fish another cycle you speak of is similar to that of five years ago? [64]

A. They expect a similar season—and with the added restrictions put on the regulations they couldn't see any way of making any money, putting up any pack to compare with anything.

Q. Comparing negotiations of your union with previous years, could you point to anything in comparison with those negotiations on the question of good faith in intention to go to Alaska this year?

A. Well, of course, negotiations was carried on on a different way altogether this year. We used to negotiate the agreement with Mr. Tichenor.

Q. Who is he, Mr. Vegen?

(Testimony of Andrew Vegen.)

A. Vice President of the Alaska Packers Association.

Q. Last year you negotiated with him?

A. Yes.

Q. As a matter of fact, you have always negotiated with Mr. Tichenor for his company?

A. Yes.

Q. Go on.

A. And, of course, this year it was different. A Committee was negotiating for the Packers. They have had no authority to promise you anything, that is, in any way or form. They always brought out they couldn't even discuss anything that increased the cost of operations.

Q. Did the try to cut down your conditions this year so far as fishermen are concerned?

A. They did.

Q. In what way?

A. After meeting for a few times we finally received an ultimatum demanding we take a 16½% cut in fish prices, and similar reductions in the percentage for the men that work ashore. And they also demanded that we take out many *classes* out of the working agreement which we had for years which were important. So, of course, the men turned it down and settled the negotiations here in San Francisco.

Q. I understand some of your men are going from Seattle this year?

A. Oh, yes. We reached agreement with the conference in Astoria, Portland, and Seattle.

(Testimony of Andrew Vegen.)

Q. Would that same agreement be satisfactory to your San Francisco fishermen?

A. We got the same wages for the men, yes.

Q. You finally got what you asked for?

A. We accepted right away.

Q. But they are not taking the San Francisco Fishermen?

A. Not with the exception of very few that used to go and fish with those people up there from year to year.

Q. Well, perhaps you don't understand the question I am making. As I understand it, most of your fishermen this year are your fishermen who live up in the northwestern states who are going to Alaska this year? [65] It other words, your fishermen who live around the bay area here are not going this year?

A. No. Not with the exception of probably 25 to 30.

Q. How many fishermen have you in the bay area who are not going this year?

A. Well, with the fishermen we got I couldn't say exactly. Approximately about 950.

Q. And the reason they are not going? Can you give us the reason why they are not going?

A. They are not going because the conference closed the operations.

Q. And your union didn't declare any strike or anything of that kind? A. No, no.

Q. Can you give us anything else on this ques-

(Testimony of Andrew Vegen.)

tion of good faith with respect to these negotiations that may have been brought up?

A. Well, the reason I think the conference closed operations, of course, they didn't think they could make enough money on it. There is probably another reason, they got good money for chartering out the ships, could make money that way—probably sure money instead of taking chances going to Alaska.

Q. Do you know some of the ships that have been chartered? A. Yes.

Q. What ships? A. The Steamer Glacier.

Q. The Glacier has been let out. Who owns the Glacier? A. The Alaska Salmon Company.

Q. That has been let out on charter?

A. Yes.

Q. What other ships?

A. Then there is the Dellaroth.

Q. Who owns that?

A. And the Bearing. That is Alaska Packers Association.

Q. They have been chartered, too?

A. Yes. These ships were chartered out a long time before the fishing season.

Q. These ships were chartered before the season, even?

A. Oh, a long time ago, several months before.

Q. How many ships were usually used in San Francisco by the Alaska Packers?

A. I can't tell you off-hand. About nine, I think. I am not sure about that.

Q. Mr. Resner: I think that is all.

(Testimony of Andrew Vegen.)

Any questions, Mr. Madison? [66]

Mr. Madison: Yes.

Cross Examination

By Mr. Madison:

Q. You didn't attend any of the negotiations at Seattle, did you? A. No.

Q. Were you present when the negotiations were held here between the Alaska Cannery Workers Union and Mr. St. Sure and Mr. Moore?

A. No. We always had appointments, you know, separate.

Q. You always had separate appointments? And you weren't present when Mr. St. Sure was present with these other people? A. No.

Mr. Resner: He just testified as to his negotiations with his own union.

By Mr. Madison:

Q. You are speaking then with regard to your own experience, so far as your negotiations with Mr. St. Sure? A. That is right.

Q. And, I think, you said one of the differences you noticed was that heretofore you had always negotiated with Mr. Tichenor? Is that correct?

A. Yes.

Q. And you said Mr. St. Sure didn't appear to have any authority but Mr. Tichenor did. Is that right?

A. That is what he told those of us, because after we had a discussion on different things, well, he said, he would have to take it back to the companies and they would let us know.

(Testimony of Andrew Vegen.)

Q. You described that as a point of bad faith?

A. I didn't call it—the way they handled this. For the reason out of the skies come the ultimatum.

Q. When you negotiated with Mr. Tichenor did he always give you a final answer on all the questions that were discussed?

A. Yes. He used to give us a different proposition to take back to the membership and if they accepted it O.K. If it was rejected we take it back to him and we discuss it some more, and finally.

Q. Sometimes did Mr. Tichenor take it back to his people and discuss it with his people?

A. Yes.

Q. You didn't think that was bad faith on his part, did you? A. No.

Q. He didn't think it was bad faith on your part because you discussed with the men, did he?

A. The reason I think it was bad faith was this. We didn't have a chance to meet often enough.

Q. Did you ask him for some meetings he refused to meet with you?

A. No. We were always sitting there ready, waiting there for several weeks, and had no call. [67]

Q. You were waiting for him to call up, was that it? A. Well, that was the agreement.

Q. And he might have been waiting for you to call him up?

A. No. That was understood by Mr. St. Sure whenever he had a chance he would call us.

(Testimony of Andrew Vegen.)

Q. Whenever he wanted to accept your proposition to give you a ring?

A. Yes. In fact, it was done in such a hurry we didn't have a chance to give him our proposition.

Q. You never did give him a proposition?

A. Yes, because we got his proposition so late that we didn't get a chance to give him ours.

Q. Now, I understand you to say one of the reasons you feel these negotiations were conducted in bad faith was because you felt these restrictions on them made it unprofitable for them to operate up there?

A. Well, you know, for some reason or other the way they went through this negotiations was a blind, way it look to me.

Q. They were going through a blind; but one of the reasons you thought that was because there was the Bureau of Fisheries of the Department of Interior had put some restrictions on them, is that it? A. Yes.

Q. And they felt it was kind of hard for them to make any money up there?

A. I felt that was one of the reasons.

Q. And you felt under the conditions that existed last year, possibly, they couldn't have made any money up there? A. Possibly.

Q. You thought that?

A. I feel sure that is the reason.

Q. And did you offer to reduce the wages of the men in any way so as to permit them to go and operate at a profit? A. No.

(Testimony of Andrew Vegen.)

Q. You did not, did you? A. No.

Q. You asked for the same as last year?

A. As last year and the year before.

Q. Yet you know they couldn't make any money?

A. I say this. Nobody knows what you are going to make in Alaska; fish is in the water and you don't know whether you going to catch them. Probably be a good season this year, too. Nobody knows anything about it. It is possible.

Q. In other words, you think when you are answering Counsel's questions no, but when you are answering mine there is plenty of fish in the sea and may-be you can make a profit, is that it?

A. I will say this. If it turns out to be a bad season they couldn't make any money on it. I will agree with you there. But, according to the limit of [68] operations, it is possible it will be a good year this season. It was closed up in 1935 to build up this run in 1940.

Q. You think, now, it will probably be a good year? A. Yes, nobody can tell.

Q. Nobody can tell anything about it?

A. Not before the season is over.

Q. In spite of this being a cycle year, as you say, it will probably be a fine year?

A. That is Counsel's argument, of course, we expect a poor season.

Q. Whose argument?

A. The companies argument, negotiators for the company; but we argue on account of the restric-

(Testimony of Andrew Vegen.)

tions on the fishing operations in 1935 it should be a good season.

Q. You think this would have been a fine season?

A. I got an idea probably it would be.

Mr. Madison: That is fine.

Mr. Resner: I don't think it is exactly necessary, Mr. Madison to assume that kind of attitude toward the witness? I would like to register my objection.

Referee Roden: Let us proceed.

Mr. Madison: I have no further questions.

Examination by Referee Roden:

Q. Now, Mr. Vegen, you say the Alaska Packers chartered some of their ships?

A. They had chartered two of them.

Q. That happened sometime ago?? A. Yes.

Q. The ships they chartered are still running around? A. Yes.

Q. And how many ships did they send up north this year, do you know?

A. They didn't send any ships here, from here, this year.

Q. They are going to operate on Bristol Bay, aren't they, some of the canneries?

A. They are operating from up north from out of Astoria, Seattle.

Q. And when did you fish up there for the last time? A. 1933 is the last fishing season.

Q. Now, you are well acquainted with the regulations that were in force in 1935 in Bristol Bay?

A. Yes, that is the year the Bureau of Fisheries curtailed operations practically altogether.

(Testimony of Andrew Vegen.)

Q. The whole bay was closed, wasn't it?

A. Yes. [69]

Q. And suddenly it was opened?

A. They opened up, I think, on the 4th of July—just a hundred boats, or something like that, very limited operations.

Q. No one knew except one or two that the Bay was going to be open, isn't that true?

A. I guess they all knew it. Probably some had more information than others.

Q. Referee Roden: I think so, too.

Redirect Examination

By Mr. Resner:

Q. Mr. Vegen, in your response to my question, when you stated on this question of bad faith or good faith, on these negotiations that it was your opinion that the operators were not going to have a profitable season were you reporting what they told to you or your own opinion?

A. Well, of course, remember they reminded us of that several times. That according to the restrictions and stuff there that it would be impossible for them to consider any raise in wages, or anything like that.

Q. In other words, it was the negotiators for the canners statement to the union on account of the curtailment they didn't expect a good year?

A. No—yes.

Examination by Referee Roden:

Q. Did you ever hear anything about a proposition that there would only be two or three canneries

(Testimony of Andrew Vegen.)

operating in Bristol Bay this year on account of the curtailment?

A. No. I never heard it. The Bureau of Fisheries announced the regulations the first of January, and they are allotted 780 boats for Bristol Bay District; and we tried to have them reconsider and let us have more boats up there, but we didn't get anywheres with it. We also tried to get some of the restrictions, like this extra closed weekly period and opening of the fishing grounds, but we didn't get anywheres with it.

Q. What I am trying to get at is this. Did the canneries, after they learned what the regulations were, did they decide to curtail their operations and carry it on as a kind of combine? Combine their catches, use all their fishermen, and simply supply one or two plants in there?

A. Well, I think it was the idea between the canners that they were in favor of curtailment, that is, the big majority of them was in favor of curtailment; but they were not in favor of the [70] restrictions. That is, some of the companies operate two canneries in the same District or in the same river, like. They are decided early last winter they were only going to operate one cannery there.

Q. About the time these negotiations were going on do you know how the Salmon market was? The canned salmon market, I am talking about.

A. You mean, the price?

Q. Yes, the price?

(Testimony of Andrew Vegen.)

A. Well, the market price is fairly good.

Q. Bristol Bay practically catches only reds, isn't that true?

A. Get a few pinks, too. Bristol Bay is practically all reds.

Q. Do you know how the price of reds was, say, during March and April? Beginning of May, this year? Compared with the prices of last year?

A. Well, the prices is a little better this year than last year, particularly the pink salmon.

Q. I am talking about the reds.

A. A little better, not much difference.

Q. Do you know how the supply was? In other words, the carry over? Do you know how much they carry over now? I am talking about reds.

A. Well, of course, I don't know exactly how much they are, but they have less salmon on hand this Spring than last year, and for several years past.

Q. I think you are mistaken?

A. I don't think so.

Q. Well, I looked that up last week in the trade journals and they seem to say the opposite. That is what I am trying to get at—more Reds on hand than there was last year at this time.

A. I was told here by somebody that is supposed to know that, this was the first part of the year, that they had a hundred and one million and thirty five thousand cases on hand. That is in January. That is, one of the operators told me that.

(Remarks were made off the record.)

Referee Roden: That is all.

Mr. Resner: Mr. Referee, there are several other witnesses and a number of letters I want to put in. I don't know, perhaps the Reporter wants a little rest at this time? We have been going pretty steady. Perhaps we can recess?

(At 3:30 p.m. a five minute recess was taken.)

[71]

Referee Roden: Are you Gentlemen ready to proceed?

Mr. Resner: We are ready. I want to direct the Commission's attention to this fact, that the names of the Claimants, apparently, are not in the record. I have here the names of all those Claimants who have turned their names into the Union as having filed claims, and copies which the Union sent to the Commission in Juneau asking for a determination on the claims.

And, also, the names of the Claimants, I would like to offer these names at this time and have them be made a part of the record at the beginning of this hearing, applying to these Claimants and any others in this same class or group whose names subsequently may come to our attention as having claims rejected. In other words, the only people we represent at this hearing are members of Local No. 5 of the Alaska Cannery Workers Union.

Mr. Madison: In other words, these Claimants are the best evidence, and this is merely a tabulation you prepared and represent as being a correct tabulation of claims having been filed and rejected on account of the labor dispute?

Mr. Resner: In other words, I want this record to appear as applying to these particular Claimants, even though this hearing is being conducted by the Union for their benefit.

Mr. Madison: As long as it is very definitely understood by not objecting any further to the introduction of this list that we don't waive in any way any of the rights we would have to resist these claims by virtue of their failure to file or by virtue of any of the other non-compliances that may have occurred.

Mr. Oliver: Our position is the same as Mr. Madison's.

Referee Roden: Yes.

MR. SAM YOUNG,

947 Stockton Street, San Francisco, California, being first duly sworn testified as follows:

Direct Examination

By Mr. Resner:

Q. Your name is Sam Young and you are the Secretary of Local No. 5 of the Alaska Cannery Workers Union, San Francisco?

A. That is right.

Q. You filed? You sent a letter and list of Claimants for benefits to the Alaska Unemployment Compensation Commission at Juneau?

A. That is right, sir.

Q. From time to time, you sent a series of letters?

[72]

(Testimony of Sam Young.)

A. Yes, sir, by airmail.

Q. I show you a copy of the letter of May 14th, Mr. Young. That letter was the letter you sent to the Commission on the 14th? (Indicating)

A. Yes.

Q. Is that the first time you sent one?

A. I sent many of them.

Q. All the others were just the same, weren't they? A. Yes.

Q. And together with the letter you sent a list of Claimants.

A. Yes. Those are the copies. I sent the original.

By Mr. Madison:

Q. Do I understand that these names you sent in were with letters like this? Each one of these? (Indicating)

A. That is right, attached to it.

By Mr. Resner:

The same letter was sent, was it not?

A. The same letter, yes.

Q. And to each letter?

A. The copy to it.

Q. That was the first letter, was it not, Mr. Young? May 14th?

A. There is an earlier letter, yes.

Mr. Resner: An earlier letter sent by my partner, Mr. Anderson.

I am going to introduce it, too. This is a carbon of the letter sent to the Commission. That was the first letter, and this one he sent was the second one. (Indicating)

(Testimony of Sam Young.)

I want to offer the letter of May 14th by Mr. Young in evidence.

Referee Roden: All right.

Mr. Resner: And at this time the list of Claimants whose names appear, (Indicating)

Mr. Madison: May I ask at this time the pertinence of this?

Mr. Resner: Yes. I want to be sure this hearing applies to these particular Claimants.

Mr. Madison: In other words, the same statement you made a while ago, this is just a statement of the people you represent at this hearing?

Mr. Resner: That is right. We represent the Union and, also, the individual members and Claimants. And I would like to ask permission at this time to introduce later, even after the conclusion of the hearing if necessary, the names of additional Claimants? [73]

Of course, this is all a matter of record before the Commission.

Mr. Oliver: Additional Claimants who may in the future file claims?

Mr. Resner: Members of our Union who may file claims later in the season, yes; who may have been disqualified on this account. There may be some Claimants whose names I don't have. Probably some put in their claims but didn't report it to the Union.

Mr. Oliver: Thus far you have only introduced Claimants who have filed claims, members of the Union who have filed claims, and been rejected.

(Testimony of Sam Young.)

Mr. Resner: But the point is if any future claims are rejected on the point this is a labor dispute; there is no point on going through this whole hearing again. In other words, I think, whatever should apply here should apply to other Claimants who lost the 1940 season.

Referee Roden: That will be a point to be decided by the Commission, I guess. I can only take into consideration claims filed up to now.

Mr. Madison: As I understand it, the only pertinence of this list is a declaration by Counsel as to who he represents.

Referee Roden: Exactly, and whose claims have been filed.

Mr. Madison: Now, the best evidence is whether these claims have been filed or not, and this won't change that at all.

Mr. Resner: Its sole purpose is to identify the Claimants.

Mr. Madison: Any names on there that haven't filed claims—this won't change that?

Mr. Resner: No.

Mr. Oliver: Is that the purpose?

Mr. Resner: I intend, also, to introduce this letter of May 11th, if you Gentlemen have no objection?

Mr. Oliver: Is that pertinent to the list? [74]

Mr. Resner: Yes, because this is referring to the claim of Frank Aragon and out of which all these subsequent letters stem.

(Testimony of Sam Young.)

Mr. Madison: Now, I understand it has only been introduced to prove other letters was sent and is not any evidentiary matter. If that is the proposed offer, I don't raise any objections, simply to prove that letter enclosed certain names. Then, I have no objection.

Referee Roden: Let me see that letter?

Well, I know that letter is on file up there because I have a copy of it, myself.

Mr. Resner: Well, I want to introduce that in evidence.

Mr. Madison: For the limited purpose specified.

Mr. Resner: Now, with these other letters, this is purely for the purpose of identification and by reference to the originals on file at the Commission's Office in Juneau, letters similar to May 14th were sent on May 17th, 21st, 24th, and 31st, June 7th, June 10th, and June 15th. And attached to these letters were the names of various Claimants whose names have already been introduced. This is merely for the purpose of identifying these Claimants with the original claims on file with the Commission.

Mr. Oliver: Those lists you introduced, you can't tell from one letter whether a particular list was attached to it or not.

Mr. Resner: It doesn't make any difference.

Mr. Oliver: Except as to the time when the claim might have been filed?

Mr. Resner: But the claims would all run from the same time, anyway, running from the opening

(Testimony of Sam Young.)

of the season. So, it doesn't make any difference when the claim was filed.

Referee Roden: All right, proceed.

By Mr. Resner:

Q. You are the Secretary of this Union, Mr. Young? A. Yes.

Q. And, as such, you received the mail, correspondence, did you not, communications addressed to the Union? A. That is right, sir.

Q. And, I am going to show you a series of letters and ask you if you received them, then, after that, introduce them in evidence here. [75] The first one is March 5th, from the Alaska Salmon Industry, signed by Mr. Moore. Do you Gentlemen want to see this? (Indicating) You received that letter, Mr. Young?

A. Yes, sir.

Mr. Resner: This is a letter from the Alaska Salmon Industry, March 5th, signed Edward W. Moore, addressed Alaska Cannery Workers Union.

And I want to draw particular attention to the first sentence which says, "As your organization has previously been advised, contracts between yourself and the Alaska Salmon Packers have been terminated."

And I want to offer that at this time.

(Received in evidence as Claimant's Exhibit No. 6.)

(Testimony of Sam Young.)

CLAIMANT'S EXHIBIT No. 6

File #6

Alaska Salmon Industry, Inc.
230 California Street
San Francisco, California

March 5, 1940

Alaska Cannery Workers Union
32 Clay Street
San Francisco, California

Gentlemen:

As your organization has previously been advised, contracts between yourselves and the Alaska salmon packers have been terminated.

The negotiations for contracts for the 1940 season will be handled by this office through Mr. Paul St. Sure, for the Alaska canners operating out of San Francisco. Our offices are located in Rooms 305-306 at 230 California Street, and our telephone is Yukon 0452. Will you please call and arrange for a mutually convenient meeting time in order that negotiations can begin without further delay?

Very truly yours,
ALASKA SALMON INDUSTRY, INC.
By EDWARD H. MOORE
EDWARD H. MOORE

EHM:EG

2 P. M.
3/11/40

(Testimony of Sam Young.)

Q. You received that letter, Mr. Young?

A. That is right.

Q. I want to offer in evidence at this time the letter of March 8, 1940, signed by Mr. Paul St. Sure, from the Alaska Salmon Industry to the Alaska Cannery Workers Union. I want to draw particular attention to the following sentence in Paragraph 1. "Your attention is drawn to the fact that such authority is strictly limited to negotiations regarding a contract for the 1940 season only without any representation whatsoever that any of these canners will or will not operate in Alaska this season, and that such negotiations can be directed only to matters immediately involving a possible 1940 contract without reference to any unadjusted matters arising out of the previous collective bargaining agreements."

I want to offer that at this time.

(Received in evidence as Claimant's Exhibit No. 7.)

(Testimony of Sam Young.)

CLAIMANT'S EXHIBIT No. 7

File #7

(Cut)

Alaska Salmon Industry, Inc.
Dexter Horton Building
Seattle U. S. A.

San Francisco Office
230 California Street
San Francisco, California

March 8, 1940

Alaska Cannery Workers Union
32 Clay Street
San Francisco, California

Gentlemen:

Enclosed herewith is a statement from Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company indicating the extent to which Alaska Salmon Industry, Inc., is authorized to deal with you on their behalf. Your attention is drawn to the fact that such authority is strictly limited to negotiations regarding a contract for the 1940 season only, without any representation whatsoever that any of these canners will or will not operate in Alaska this season, and that such negotiations can be directed only to matters immediately involving a possible 1940 contract, without reference to any unadjusted matters arising out of previous collective bargaining agreements.

Should you desire to present any claims arising

(Testimony of Sam Young.)

out of operations for 1939 or prior years, you are requested to take them up directly with Mr. Fleager of Alaska Salmon Company, Mr. Peterson of Red Salmon Canning Company, or Mr. Everett Mathews of the firm of Pillsbury, Madison and Sutro, on behalf of Alaska Packers Association, as the case may be. These gentlemen are already well acquainted with problems which have arisen under the previous contracts, and inasmuch as they have already had under consideration a number of such claims, it is the decision of these companies that they should follow such disputed matters through to their final settlement.

This office, on the other hand, has had no experience either with the previous contracts in general, or with the specific disputes which have arisen under them. We are prepared only to consider possible arrangements for the coming season. Will you, therefore, please present any such claims immediately to the parties above named for further discussion.

Since the companies individually are ready to meet with you concerning all prior claims, we believe it is obvious that all unsettled matters for previous seasons can be adjusted through proper legal channels without depriving either party of a full and fair determination. Since this right of adjustment exists, and since the time factor is so vital to all parties concerned, we trust that you will not continue to take the position heretofor declared by you to the effect that the final

(Testimony of Sam Young.)

settlement of all these separate claims in a manner satisfactory to you is a condition precedent to any 1940 negotiations. Such a position might jeopardize all possibility of operation, for it would require one party or the other to face forfeiture of a right to a full hearing under threat of a refusal to bargain.

Consequently, we will appreciate your advising us in writing at your earliest convenience concerning the position which your group proposes to take in the light of this communication.

As we have already informed you, we are ready to negotiate, as herein set forth at your convenience.

Yours truly

ALASKA SALMON INDUSTRY, INC.

J. PAUL ST. SURE

J. PAUL ST. SURE

JPSS.OB

Enclosure

[Printer's Note: Claimant's Exhibit No. 8, apparently overlooked here, is identically the same as Respondent's Exhibit V, set out in full at page 373 of this printed record.]

You received that letter, Mr. Young?

A. That is right.

Mr. Resner: This is a letter of March 8, 1940, from the Alaska Salmon Industry, signed by Mr.

(Testimony of Sam Young.)

Tichenor, for the Alaska Packers, Mr. Fleager for the Alaska Salmon Company, and Mr. Peterson for the Red Salmon Company, notifying the union, "Mr. St. Sure and Mr. Moore are authorized to negotiate with your union for collective bargaining agreements covering the 1940 Salmon canning season on behalf of the undersigned canners.

"This authorization is without any representation whatever that any of the undersigned canners will or will not operate in Alaska during the 1940 season." [76]

I want to offer that letter in evidence.

(Received in evidence as Claimants' Exhibit No. 9.)

CLAIMANT'S EXHIBIT No. 9

1

#9.

Alaska Salmon Industry, Inc.
230 California Street
Telephone Yukon 0452
San Francisco, California

March 8, 1940

Alaska Cannery Workers Union
32 Clay Street
San Francisco, California

Gentlemen:

This is to advise you that Alaska Salmon Industry, Inc., through Mr. Paul St. Sure and Mr. Edward H. Moore, are authorized to negotiate with your organization for a collective bargaining agreement covering the 1940 salmon canning season on

(Testimony of Sam Young.)

behalf of the undersigned canners. This authorization is without any representation whatsoever that any of the undersigned canners will or will not operate in Alaska during the 1940 season.

This authorization is limited to negotiating matters directly involved in establishing a collective bargaining agreement for the 1940 season only, or such other matters as may be authorized specifically, and does not empower the above named parties to act upon any claims or other matters which may still be in dispute under contracts existing in 1939 or years prior thereto.

ALASKA PACKERS
ASSOCIATION
By A. K. TICHENOR
ALASKA SALMON COMPANY
By H. A. FLEAGER
RED SALMON CANNING
COMPANY
By G. B. PETERSON

Q. I want to direct your attention to that letter, Mr. Young? A. Yes.

Q. That was received by your union?

A. That is right.

Mr. Resner: This is a letter from the Alaska Salmon Industry dated April 3, 1940, signed by Mr. Paul St. Sure. I want to direct particular attention to Page 5 of this letter, paragraph 1,

(Testimony of Sam Young.)

applying to the Alaska Cannery Workers Union.

"This agreement for operations out of San Francisco will be negotiated on a uniform basis at Seattle, with provisions to apply to all operations undertaken from California, Oregon, and Washington. The San Francisco Operators have authorized the Alaska Salmon Industry, Incorporated, at Seattle to represent them in these negotiations which are now in progress. In the event satisfactory agreements are reached for Central Alaska and those operations are undertaken, and in the event Bristol Bay operations are undertaken on agreement basis, cannery workers will leave on May 22nd. Any agreements are contingent upon operations."

I offer this.

(Received in evidence as Claimant's Exhibit No. 10.)

Q. You received that letter? A. Yes.

Mr. Resner: This is a letter dated April 11, 1940, from the Alaska Salmon Industry, signed by Mr. St. Sure. It is addressed to the Unions Concerned. I want to direct particular attention to the first paragraph, which reads:

"On April 3, 1940, we advised you that if an expedition was to be undertaken to Karluk this season all arrangements for employment would have to be completed on or before April 10, 1940. This letter is to advise you employment agreements are not completed by the date specified and, therefore, operations at Karluk will not be undertaken."

(Testimony of Sam Young.)

I offer this in evidence.

(Received in evidence as Claimant's Exhibit No. 11.)

CLAIMANT'S EXHIBIT No. 11.

#11

Alaska Salmon Industry, Inc.
230 California Street
San Francisco, California
Telephone YUkon 0452

April 11, 1940

To the Unions Concerned:

On April 3, 1940, we advised you that if an expedition was to be undertaken to Karluk this season, all arrangements for employment would have to be completed on or before April 10, 1940. This letter is to advise you that employment agreements were not completed by the date specified, and therefore operations at Karluk will not be undertaken.

Following our letter of April 3rd we met with all unions that were willing to negotiate with us, and attempted to reach an agreement with each. The Machinists' Unions and the American Communications Association declined to negotiate. Since these latter organizations are affiliated with the Maritime Federation of the Pacific, and since the Federation has taken the position that all unions of that group must be satisfied before any will sign, a settlement was impossible even though other individual union agreements had been reached.

In addition, the Alaska Cannery Workers'

(Testimony of Sam Young.)

Union, which withdrew from negotiations in San Francisco on April 2nd and subsequently agreed to be bound by an agreement now being negotiated in Seattle for all 1940 operations, declined to enter into a memorandum agreement based on the results of the Seattle negotiation. The representatives of this union suggested a memorandum agreement based on 1937, 1938 and 1939 San Francisco agreements, and likewise requested that some of their members be taken to Alaska on the April voyage, despite advices as early as last September that this would not be done. Subsequently, on the evening of the 10th, the Cannery Workers' Union informed us that they preferred to await the outcome of negotiations at Seattle before signing any memorandum, despite the fact that the sole purpose of the voyage to Karluk and Chignik schedules tentatively for next week is to prepare for cannery operations at those places.

On April 9, 1940, we received a letter from Revels Cayton, Secretary of District Council #2 Maritime Federation of the Pacific, advising us that although our proposals were unacceptable to all unions of that group, nevertheless all of the unions were "ready, able and anxious to continue" to complete contract arrangements. The fact that at least two of these unions still refuse to meet with us would seem to cast doubt upon the sincerity of this statement.

Mr. Cayton likewise states that the unions he represents feel that the Alaska Salmon Industry,

(Testimony of Sam Young.)

Inc., is endeavoring to "force through a contract" by "delivering ultimatum after ultimatum". Any force which is present in the situation is the force of circumstances resulting from the time factor involved in the established dates for the fishing season.

Mr. Cayton likewise protests against the inadequacy of certain proposals made by us, and specifies three.

The first is the elimination of the $75.00 penalty clause in the Fishermen's agreement, which has been in effect for many years. This clause was a proper one to protect the Fishermen against arbitrary abandonment of expeditions after the men had been signed on, but in recent years it has operated to impose a penalty on employers for conditions beyond their control, since expeditions can be tied up by job action of other unions. We would have no objection to continuing the penalty clause to protect the Fishermen against cancellation of employment for reasons within our control.

The second is an alleged attempt to destroy the 8 hour day enjoyed by the Marine Cooks and Stewards. At the time Mr. Cayton's letter was received we were meeting with this organization and stipulated that the 8 hour day was not to be extended. Our counter proposal did not contemplate any encroachment on this condition.

The third is an alleged endeavor to deprive the Cannery Workers of 35 days work in 1940. Last

(Testimony of Sam Young.)

September this union was notified that its members would not go to Alaska on the Spring voyage, despite the fact that last minute demands in 1939 had resulted in such employment, although the services of these workers were not required until 35 days later.

Mr. Cayton further suggests that if the unions could meet with the operators on other than an industry basis, the unions would hope to "hammer out an agreement". The Industry desires to negotiate, rather than to be "hammered".

In connection with charges of delay and bad faith, we believe the record of attempted negotiation will speak for itself.

Pursuant to our letter of April 3rd, we desire to again call to your attention the sailing schedule set forth therein. If an operation is to be undertaken at Chignik, agreements must be reached on or before April 12th. In this connection we reiterate our offer by previous letters and telegrams that we are willing to meet and negotiate with you and to consider or bargain concerning possible arrangements for employment for Chignik in accordance with sailing schedule heretofore specified.

Yours truly,

ALASKA SALMON INDUSTRY, INC.

By J. PAUL ST. SURE

J. PAUL ST. SURE

JPSS/OB

(Testimony of Sam Young.)

Q. You received this letter, Mr. Young?

A. Yes. [77]

Mr. Resner: This is a letter dated April 22, 1940, from the Alaska Salmon Industry, signed by Mr. Moore, addressed to the Alaska Cannery Workers Union, where it is stated: "Operation of Chignik and Karluk is abandoned because of inability to reach agreement with all the labor organizations involved within the time set forth in our letter of April 3, 1940."

I want to offer this in evidence at this time.

(Received in evidence as Claimant's Exhibit No. 12.)

CLAIMANT'S EXHIBIT No. 12

#12

Alaska Salmon Industry, Inc.
230 California Street
San Francisco, California
Telephone YUkon 0452

April 22, 1940

Alaska Cannery Workers Union
32 Clay Street
San Francisco, California

Gentlemen:

In response to your recent request, we are informing you by means of this communication that cannery operations of Alaska Packers Association at Chignik and Karluk for the 1940 season have been abandoned because of inability to reach agree-

(Testimony of Sam Young.)

ment with all labor organizations involved within the time set forth in our letter of April 3rd, 1940.

Yours truly

ALASKA SALMON INDUSTRY, INC.

By EDWARD H. MOORE

EDWARD H. MOORE

EHM/OB

Q. With respect to the position of the Union at this time, Mr. Young, or the position that it had all along on these operations from San Francisco, what conditions did they offer? On what conditions did they offer to go from San Francisco? A. You mean, the Packers?

Q. The Union?

A. Well, on the last meeting we decided if the Packers were willing to go we were willing to go on the 1939 San Francisco Agreement.

Q. 1939 San Francisco Agreement. That was the final offer you made to them?

A. That is right.

Q. Was that offer refused or accepted?

A. Well, it seems to be in the early part of it. It seems to be the trip was abandoned and that's all we heard of it.

Q. In other words, the trip was abandoned before you made that offer?

A. No, I won't say that. When we make the offer we have no reply from the negotiations.

(Testimony of Sam Young.)

Q. No reply was made to that offer?

A. That is right.

Q. No strike was declared by the Union?

A. No, sir.

Q. And you have had no workers from San Francisco in Alaska at all this season?

A. Not in my knowledge, no.

Q. The last time you had workers from your Local No. 5, here in San Francisco in Alaska was in the 1939 season? A. That is right.

Q. And when that season was over they came back home, and haven't been working since?

A. Except some natives up there which belong to our organization work up there in their own ways.

Q. You have some native Alaskans, that is?

A. That is right.

Q. I am speaking about San Francisco?

A. None of them, no.

Mr. Resner: I think that is all. [78]

Cross Examination

By Mr. Madison:

Q. When was the 1939 of San Francisco Wages Agreement offer made?

A. Let's see, around about on our last meeting. Around about, I wouldn't say exactly what the date was.

Q. Was that meeting May 29th in Seattle?

A. That is right, about that.

(Testimony of Sam Young.)

By Mr. Resner:

Q. I referred to the San Francisco offer.

A. That is what I mean, yes.

Q. Mr. Madison is talking about Seattle. We are talking about two different things. When was that offer last made in San Francisco?

By Mr. Madison:

Q. No testimony was ever made in San Francisco?

A. Well, a telegram to prove the fact is in there.

Q. A telegram from whom?

A. 1939 Agreement. We sent it to the negotiations.

Q. Your own telegram? You sent it to the Negotiations Committee? A. That is right.

Redirect Examination

By Mr. Resner:

Q. Was an offer made by your San Francisco Committee to operate here in San Francisco offering to sign for the 1939 San Francisco wages?

A. That is right.

Q. And that is the date I want to get. Approximately when was that?

A. Well, I couldn't say off-hand, but I have the record there. But I couldn't say, except the date.

Q. What month? What week? Was it in March? April? A. Well, around in March, or.

Q. Latter part of March?

(Testimony of Sam Young.)

A. That is right.

Mr. Resner: I think that is when it was.

By Mr. Madison:

Q. May I see the telegram, please? He said he made the offer by the telegram.

Mr. Resner: They didn't make it by telegram to the Packers. This was instructions to the union committee—telegram to the union committee.

Mr. Madison: Well, may I see that? [79]

By Mr. Resner:

Q. Have you got it, Mr. Young?

A. (Indicating.)

Mr. Madison: It has no date.

By Mr. Resner:

Q. What date was that sent, Mr. Young?

A. I would say about four weeks ago or five.

Q. Is Mr. Woolf back in town yet?

A. I can't say, might or might not be, I can't say.

By Mr. Madison:

Q. Well, now, you say four or five weeks ago?

A. About.

Q. One of your Negotiating Committees was in Seattle, and you said the meeting was May 29th. Have you any other reason to believe than that it was May 29th?

Mr. Resner: We are talking about March, aren't we?

(Testimony of Sam Young.)

By Mr. Madison:

Q. Let me ask him the question. Let's get this clear, if we can. Do I understand that an offer was made by the union, of which you are the Secretary, to go to work on the 1939 San Francisco wages and working conditions?

A. That is right.

Q. It was made? A. That is right.

Q. Where was it made? Where was it presented to the employer? Was it presented to the employer in Seattle or was it presented to the employer in San Francisco? What is the answer to that? A. In Seattle.

Q. It was presented to the employer in Seattle?

A. And we also instructed our delegate here. Also, our delegates are instructed to take this matter up locally as well.

Q. You instructed the delegates to do it?

A. That is right.

Q. Did the delegates do it?

A. Well they have own meetings here off and on.

Q. I am asking, did they do it?

Mr. Resner: That was Mr. Whaley's testimony.

By Mr. Madison:

Mr. Whaley's testimony is in the record. He was talking about a memorandum agreement in which he said they would get no less than that. They didn't make it because when they got there they found it didn't do them any good. [80]

(Testimony of Sam Young.)

Mr. Resner: He has reference to the negotiating committee.

By Mr. Madison:

Q. You heard Mr. Whaley testify?

A. That is right.

Q. So far as you know, the only offer that was made in San Francisco, if any, was the offer made to which Mr. Whaley referred?

A. That is right.

Q. So, you don't know what offer was made in Seattle, do you? You weren't there at the time?

A. No, I couldn't say.

Mr. Madison: No further questions.

Redirect Examination

By Mr. Resner:

Q. No strike was called by San Francisco?

A. No, sir.

Q. There is no strike existing, is there, on the part of your union against the Packers?

A. No, sir.

By Mr. Madison:

Q. Did I understand that there are members of the local union, of your Local No. 5, in Alaska and they work up there?

A. Well, those been up there for the past two or three years. A few of them, I would say.

Q. That are members of Local No. 5?

A. That is right.

Examination by Mr. Roden

Q. You say you have got members up in Alaska who belong to Local No. 5?

(Testimony of Sam Young.)

A. Just a few of them.

Q. Whereabouts are they?

A. Well, I think, in Karluk and Chignik. They stay there the last few years, you see, and they work for the Packers up there on spare time when the season is over, you see.

Q. How did they happen to join Local No. 5?

A. Well, in other words, they joined and they go up there and stay over the season. They stay all year around and become residents there. They apply for citizenship up there.

Q. They join here and move away to Alaska? Go up there and acquire residence? A. Yes.

Mr. Resner: That is all, thanks.

MR. JOHN W. ACOSTA,

400 Oak Street, San Francisco, California being duly sworn testified as follows:

Direct Examination

By Mr. Resner:

Q. You are a member of Local No. 5?

A. Yes.

A. You are a member of the Negotiating Committee, this year? A. Yes.

Q. Were you a member of the Negotiating Committee last year? A. No. [81]

Q. Were you ever before this year?

A. No, never.

Q. I want to direct your attention to the ques-

(Testimony of John W. Acosta.)

tion of whether or not these negotiations were carried on in good faith or not with the intention of arriving at agreements on the part of the Canners? What have you to say to that?

A. I believe they were not.

Q. Can you tell us why?

A. Because my impression when we went to the Packers or with the lawyers was it gave me an impression of indifference toward negotiations. Just like when you want to go into an office and see the men at the door and they don't know nothing and don't say nothing. In one word, they were over there only to hear us talk without giving us absolutely no basis for negotiations.

Q. In other words, you made offers and didn't get any counter offers?

A. We didn't get absolutely nothing.

Q. Did you present your 1940 agreement here?

A. We did not negotiate the wage and general conditions in here, but we negotiated Manning Scale and improvements.

Q. When you say improvements, you mean living conditions?

A. I mean, fixing up the living houses, and so on and so forth; but, in the process of negotiations we figured Mr. Moore and Mr. St. Sure were only there for asking questions without any knowledge of committing themselves to anything at all, which leave the Committee, only, talking. And they ask different things. And so that is why we went when the question of Chignik and Karluk came about.

(Testimony of John W. Acosta.)

We offered the 1939 San Francisco Agreement as the basis for to ship the men out to Alaska, which Mr. Moore completely refused to accept that.

Q. When was that?

A. About, I believe, I am not very sure of the date, but the 7th of April, I believe.

Q. In San Francisco?

A. In San Francisco. And then the 10th.

Q. The 10th of what?

A. Of April. I might be wrong one day or two.

Q. You wanted a San Francisco Memorandum Agreement with the conditions at least what they were from San Francisco?

A. 1939 San Francisco.

Q. And what was the reply to that offer?

A. The reply was it wasn't the offer of the Packers in Seattle. It wasn't the 1939 San Francisco Agreement, but it was the 1939 Seattle Agreement.

Q. In other words, he said they would sign for 1939 Seattle?

A. In other words, they want us, they ask us to sign a Memorandum Agreement as to allow the Packers free hands to ship the other crews, but leaving all of our men in San Francisco; and we didn't figure that it was [82] reasonable at all to enter into any agreement when our men was not going to be shipped.

Q. In other words, they wanted you to sign an agreement that the men from the northwest ports would go. Is that right?

(Testimony of John W. Acosta.)

A. No, that the other unions in San Francisco should go upon the signing of the agreement with the Alaska Cannery Workers. But we didn't come to any agreement with them because they told us flat that no man was going to be taken in the first ship.

Q. In the first ship?

A. On the first ship.

Q. When was that?

A. That was April in the office of Mr. Moore and St. Sure.

Q. When was the first ship supposed to go?

A. That was up to the discretion of the Company, I suppose.

Q. Well, generally, when does that go, as a matter of custom?

A. They referred to a certain date in a letter to the Negotiations Committee, but I just don't remember the date. They referred to a certain date the first ship was going to sail to Alaska.

Q. That was for Karluk and Chignik.

A. Karluk and Chignik.

Q. You heard the testimony of Mr. Rendon and Mr. Whaley? A. Yes.

Q. Do you corroborate the testimony?

A. Absolutely.

Mr. Madison: Mr. Whaley testified to things in Seattle.

By Mr. Resner:

Q. Excluding things in Seattle. I am speaking only of San Francisco. A. Yes.

(Testimony of John W. Acosta.)

Q. You were there at all the meetings in San Francisco? A. Yes.

Q. You never went to Seattle?

A. I just read the communications from Seattle, and so on.

Q. The union hasn't declared a strike?

A. No.

Q. The union is not on strike now?

A. Now.

Q. Always been willing to go on the basis of 1939 of San Francisco agreement? A. Yes.

Q. And that is your attitude, too?

A. Yes.

Cross Examination

By Mr. Madison:

Q. Do I understand the union has always been willing to go on 1939 San Francisco agreement?

A. That was the general sentiment of the members. [83]

Q. Didn't you submit a 1940 agreement? A new agreement?

A. It was submitted to the companies, 1940 agreement, yes.

Q. But you didn't mean that you were really willing to go on the 1939? Is that it?

A. In negotiations, you know, there are certain fluctuations up and down.

Mr. Resner: In other words, the unions were willing to bargain, Mr. Madison, but the companies were not.

(Testimony of John W. Acosta.)

By Mr. Madison:

Q. In other words, you asked for a little more than you expected to get. Is that it?

A. We used the 1939 San Francisco Agreement as a basis for agreement. It all depends on the compan*ies* answer, and we didn't intend to lose absolutely nothing from the 1939 agreement.

Q. You wanted to get at least 1939?

A. Well, it is reasonable to understand. An agreement is based upon certain things we gained before, and we are asking certain things in addition to that. But it was to the discretion of the Company to agree we would get it.

Q. In other words, you figured that each year what you get you are at least going to get that next year, and maybe something more?

A. Well, the general idea of the members is when we sign an agreement with the Company for 1939 there was a general understanding that that was the starting point for future negotiations.

Q. Nothing less than that? A. Naturally.

Q. And so, do I understand that you were willing to, always willing, to go on 1939 and not get anything more?

A. Of course, we always want some more.

Q. Always want some more?

A. Naturally.

Q. Did you ask for any more?

A. Naturally, the agreement calls for it. You have read the agreement, I suppose?

(Testimony of John W. Acosta.)

Q. Yes, I have. Now, the matters that you discussed down here with Mr. Moore and Mr. St Sure had to do largely with the Manning Scale, didn't they?

A. Yes, and general improvements.

Q. And general improvements in working conditions. That is to say, housing of the men and things of that kind?

A. That is right.

Q. And you didn't have any difficulty reaching a substantial accord, agreeing with them on that, did you?

A. Not very much, no. [84]

Q. There wasn't much trouble about that?

A. No, we were asking reasonable things, that is why.

Q. I have no question about that. If they gave in to you, undoubtedly your request was reasonable. And they did, substantially?

A. Yes.

Q. The real difficulty was with the wages and conditions of the 1939 or of the 1940 agreement, as to whether the Seattle wages would apply or whether the 1939 wages would apply or what you got in 1940 would apply. That was the main argument, wasn't it?

A. Well, we had no argument on that.

Q. That was all done in Seattle?

A. That is correct.

Mr. Madison: That is all.

(Testimony of John W. Acosta.)

Redirect Examination

By Mr. Resner:

Q. Just one or two questions, Mr. Acosta. In other words, when the union first started to bargain this year you represented you 1940 agreement. That is, in Seattle it was presented, was it not?

A. Yes.

Q. And other things you testified to were separately bargained for here? A. Yes.

Q. That was the basis for starting negotiations?

A. Yes.

Q. And things you offered in San Francisco were Manning Scale and conditions?

A. General conditions, yes.

Q. Those were also improvements over last year?

A. Not exactly improvements over last year. It was improvements over all the years, because the Company agreed three or four years before to comply with these things and they never did it. You see, for instance, in 1936 they agreed with the union to improve the conditions of housing, and so on and so forth, which they never did.

Q. Lets talk about housing, for example. This year you made certain proposals to improve the bunk houses up there, as I understand it?

A. We only reaffirmed what we asked three years before.

Q. What was that, specifically?

A. Well, build better houses for the men, and all general facilities for the livelihood of the men up there for the ways of living.

(Testimony of John W. Acosta.)

Q. What was that?

A. Well, want bath houses and better kitchens and better bunk houses and beds, and so on and so forth, general things. [85]

Q. Were any counter offers made by the negotiators locally?

A. Well, the Company agree each year to comply with this request from the union, but they never did it.

Q. Nothing was ever done?

A. Well, for instance, they agreed to do certain things demanded of them and this year they go over there and start building a little house. And that is all they do, because they claim they haven't got absolutely no wood or lumber and no carpenters, and so on. But here they offer to take everything over there and do it, but when we get over there they only call one carpenter and have just a little pile of wood and start a little house. And that is all they can do, because they claim they have no timber.

Q. Did they agree from San Francisco this year they would improve the housing conditions?

A. To a certain extent, yes, they agreed to certain things. But we were prepared to ask the companies to let us go on *and* inspection of the ships to see how much lumber they get so as not to get fooled again.

Q. You wanted to be sure they would take the lumber along?

A. Yes, and sufficient carpenters.

(Testimony of John W. Acosta.)

Q. What did they say to that?

A. Well, we didn't come to any conclusion on that, because, you know, the meetings was short, and so on, and we proceeded to wait another two or three days.

Q. Did they give you any answer at all?

A. Well, we go to the Superintendents for the Company and they generally agree to certain things, and certain of the things they just completely refuse to agree with. For instance, in the building of two bunk houses in Karluk, I believe, or Chignik, either one of them, they are completely houses not even for pigs to live in. And we want the companies to erect new houses and sanitary conditions and everything, but the Superintendents claim there was no time, only to erect one bunk house at a time. Which, well, we agree finally to go on that, to let the Company build that one bunk house and leave the old one for next year, and so on.

Q. I want to turn to the question of Manning Scales for San Francisco for this year. When the union made a proposal on the subject of Manning Scales what did it have in mind for the basis of them?

A. The union make a proposal of increasing certain number of men per line, according to the new machinery that the companies were going or are putting in in Alaska. [86]

In certain canneries the production of the machinery in increasing around thirty or forty cans a minute above the previous years.

(Testimony of John W. Acosta.)

Q. That is, by the installation of new machinery?

A. That is right. And the union contended this installation of new machinery requires more men, and not the number of men the Company offer.

Q. Did you ask them to increase the number of men in these operations where this new machinery was put in?

A. Yes. One of the Superintendents agree with us, one of our members in the Negotiating Committee, to give certain increase of men. But, as I say before, over there they were negotiating without any foundation of saying yes or no.

Q. When you negotiated here in San Francisco about the Manning Scales what reply did you get from Mr. St. Sure and Mr. Moore about the Manning Scale?

A. Generally have nothing to say about it.

Q. Did they come back with the counter offer?

A. There was superintendents over there, and we went into detail on the Manning Scale and generally the superintendents agree with the foremen that that was present over there, that these men were needed.

Q. These foremen you are talking about, where did you talk with them, here in San Francisco?

A. In San Francisco. Mr. Rendon was the man took up this question of Manning Scale.

By Mr. Madison:

Q. The foremen are of your men. As I understand it, the Superintendent was always there?

(Testimony of John W. Acosta.)

By Mr. Resner:

Q. To who do you refer?

A. The Superintendents, I refer to Company man. And the foremen to our union members.

Q. Did you talk to the foremen?

A. Two of them. One of them agree, the other I don't remember.

Q. Was that in agreement with the canners, or did the final agreement have to come from Mr. St. Sure and Mr. Moore?

A. Finally, I believe, it should come through them. I don't know.

Q. They were supposed to make the final agreement?

A. They agree with us in the table, that was agreement of the Superintendent, but he was supposed to take this question to Mr. Tichenor.

Q. The Superintendent wasn't authorized to sign any agreement?

A. No. And then, in turn, Mr. Tichenor, I suppose, would give [87] authorization to the lawyers.

Mr. Resner: I think that is all.

Any questions?

Examination by Referee Roden:

Q. When did you offer to go back under the San Francisco agreement?

A. The first offer we made around——don't quote me on this, because it might be one day before or one day after——the 7th of April.

Q. And the great trouble was wages?

A. We had no trouble on wages. We only asked

(Testimony of John W. Acosta.)

1939 San Francisco conditions and wages. That is the basis of memorandum to ship the men from here to Alaska, and the flat reply was no.

Q. That was about April 7th?

A. April 7th.

Referee Roden: That is all.

Recross Examination

By Mr. Madison:

Q. When you speak about April 7th and agreeing to go back to work on the 1939 San Francisco wages, was your testimony the same as has been testified by other members of your Committee that the Memorandum Agreement was to be at least as good as 1939 wages?

A. No, not even asked. At least, we asked 1939 San Francisco conditions and wages flat.

Q. And you were willing to sign on that, flat, at that time?

A. Flat, providing it was retroactive to the final agreement in Seattle, because the agreement in Seattle was a coastwise agreement and it was going to be subject to it.

Q. In other words, if the 1939 wages were less than the wages obtained in Seattle, then you would get the Seattle wages, the higher wages that were obtained later?

A. We was taking that chance.

Q. You were taking that chance you might get some more?

A. Or less. It all depends on the process of negotiations, that is all.

(Testimony of John W. Acosta.)

Q. Wait just a minute. I am coming to that "less" in a minute! At the same time I understand if the negotiations in Seattle were less then you were going to get at least the 1939 wages in San Francisco. Am I right?

A. I don't know. We went ahead on the basis of negotiating the Memorandum. The lawyers, as I stated before, flatly were over there only to say yes or no. There was no process of negotiations because they were not willing to do so. My understanding as a member [88] of the Committee was that the Company nominated or put or paid these two men over there to represent the three companies; and my understanding in particular was when the Company say, "Here it is. Go and negotiate." They implied to give them a certain price, to come to an a yes or no between negotiations, which didn't help because they never negotiated.

Q. Getting back to my question as to what the Memorandum Agreement was, what the proposition was, you were willing to settle on, I understand that you were willing to go on the basis of the 1939 wages, San Francisco wages?

A. That is correct.

Q. Plus whatever you might get out of the Seattle Agreement?

A. Well, there was an expectancy is all.

Q. Expectancy, is all? A. Right.

A. And under no circumstances were you to get less than 1939 wages?

A. According to that agreement, no. According

(Testimony of John W. Acosta.)

to the Memorandum Agreement we were not going to get less.

Q. No matter what happened in Seattle?.

A. That was dependent upon the negotiations of the Union.

Cross Examination

By Mr. Oliver:

Q. This April 7th date you refer to, that refers to work in Central Alaska?

A. That refers to Chignik and Karluk.

Q. Now, the date on which you refer to as being willing to go to Bristol Bay for the 1939 San Francisco wages, when was that offer made by you?

A. Well, I am not very good in remembering dates, but it was around six weeks ago, I think, seven weeks, I don't remember.

Q. What are six weeks from now?

A. Well, I don't know, the 28th or 20th of last month.

Q. Of May?

A. I believe. I am not certain. You don't have to quote me on that, because I am not certain.

Examination by Referee Roden:

Q. Local No. 5 doesn't send any men to Bristol Bay, anyhow, does it? A. No.

Redirect Examination

Q. Last year?

A. Last year, yes——Bristol Bay, Chignik, and Karluk.

Q. You always send men to Bristol Bay?

(Testimony of John W. Acosta.)

A. That is which?

Q. This year they are not operating with San Francisco operators? A. No. [89]

Q. But you haven't declared any strike against Bristol Bay canneries?

A. Absolutely not.

Mr. Resner: That is all I have at this time, Mr. Referee. I have two short witnesses in the morning, but before we adjourn I would like to have made a part of the record at this time the Regulation No. 10 of the Alaska Unemployment Compensation Law fixing the seasonal dates in this industry. I would like to have that given a number and made our next in order.

(Received in evidence as Claimant's Exhibit No 13.)

CLAIMANT'S EXHIBIT No. 13

#13

BENEFIT REGULATION No. 10

(Salmon Industry)

Section "3(c) (1)" of the Alaska Unemployment Compensation Law provides as follows:

"The term 'seasonal industry' means an occupation or industry in which, because of the seasonal nature thereof, it is customary to operate only during a regularly recurring period or periods of less than one year in length. The Commission shall, after investigation and hearing, determine, and may thereafter from time to time redetermine, the long-

est seasonal period or periods during which, by the best practice of the occupation or industry in question, operations are conducted. Until such determination by the Commission, no occupation or industry shall be deemed seasonal' "

Having given notice to all intersted parties of its intention to do so, the Commission did investigate and, after hearing, did determine:

A. That the industry known as the "Canned Salmon Industry" is of a seasonal nature; that it is customary to operate only during the regularly recurring periods.

1. That there are two general occupations within the "Canned Salmon Industry" known as the "short" and "long."

2. That the seasonal periods in the Territory of Alaska for these "short" and "long" seasons within the "Canned Salmon Industry" in the following districts are as follows:

Ketchikan District, including Hidden Inlet to Union Bay and the West Coast of Prince of Wales Island:

Short Season: June 25-September 20.

Long Season: April 10-October 1.

Wrangell District, including Union Bay to south end of Wrangell Island and Burnett Inlet:

Short Season: June 25-September 5.

Long Season: April 15-September 20.

Petersburg District, including canneries on Kuiu Island and Kupreanof Island:

Short Season: June 15-September 15.

Long Season: April 10-September 15.

Icy Straits, Chatham Straits, and Peril Straits:

Short Season: June 1-September 10.

Long Season: April 10-September 10.

Taku Inlet:

One Season: April 12-September 23.

Yakutat:

Short Season: May 10-September 10.

Long Season: April 21-October 10.

Cordova District, including east side of Prince William Sound:

One season: April 1-August 20.

Prince William Sound, including eastern side of Kenai Peninsula:

Short Season: June 10-September 1.

Long Season: April 10-September 10.

Cook Inlet, as far west as Chugach Island:

Short Season: May 25-September 10.

Long Season: April 5-September 10.

Kodiak Island, including Afognak Island:

One Season: April 5-September 5.

Alaska Peninsula:

One Season: April 1-September 10.

Bristol Bay, all canneries in Bay proper:

One Season: May 5-August 25.

Mr. Madison: Since Counsel is offering that Regulation in evidence, I would like to state for the purpose of the record that I, on behalf of my clients, question the propriety of that Regulation on the ground that the seasons as outlined therein are in excess in point of time to the actual sea-

sons, and reserve the right to ask the Commission to consider the propriety of that order at that proper time.

Mr. Oliver: I make the same request.

Mr. Resner: What order do you refer to?

I introduce this for the purpose of showing the seasonal character of this industry and the approximate dates this industry is in operation.

Mr. Madison: Well, I object to it for the reasons given.

Mr. Oliver: Yes. I object to it for the same reasons; and, further, it is not a true record of the actual dates.

Referee Roden: Those dates are fixed by the Commission, and they seem to have authority to fix it by Statute.

Mr. Oliver: So far as I know they do pursuant to proper notice.

Referee Roden: I don't know if they can notify everybody to go fishing in Bristol Bay. Probably they notified your Local Council?

Mr. Resner: The unions never had notice. One more thing here before we conclude. That is all I want to offer at this time. We have two witnesses who will not be long in the morning.

(Remarks were made off the record.) [90]

Referee Roden: We will adjourn until ten o'clock in the morning.

Mr. Resner: I want to get one thing clear before we adjourn this hearing. The only question is

whether or not a labor dispute exists, and any defenses that may be offered, any other reasons, aside from the labor dispute will not be admissible.

Referee Roden: Not upon this hearing.

Mr. Resner: That is my understanding. Thank you.

Mr. Oliver: Will there be some other opportunity to object?

Referee Roden: I understand the Commission can listen to objections any time prior to a final decision by them.

At 5:05 P. M. the hearing was adjourned to reconvene Tuesday morning, June 18, 1940, at 10 a. m.

Tuesday Morning Session

At ten o'clock, June 18, 1940, the hearing was reconvened by Referee Roden.

Referee Roden: All right, Gentlemen, we may as well proceed.

Mr. Resner: I am offering at this time and want to make part of the record some additional Claimants.

Referee Roden: All right. We will put that in with the others.

Mr. Madison: Are those Claimants filed?

Mr. Resner: Yes.

At this time I want to offer the personnel of the Alaska Salmon Company from our Union, Local No. 5, for the 1939 season (Indicating)

Mr. Oliver: For what purpose?

Mr. Resner: These are the people who worked at Alaska Salmon plants last year in Alaska and who work there from year to year, as I understand it. It is our contention Alaska Salmon wasn't going to operate under any circumstances this season; therefore, these people can't be unemployed because of any labor dispute, even if this inability to arrive at a contract constitutes a labor dispute.

Mr. Oliver: I object to that other than as a list which Mr. Resner contends represents persons [91] who were employed by the Alaska Salmon Company at their plants at some time during the 1939 season.

Referee Roden: What is the ground of the objection?

Mr. Oliver: We don't, in the first place, admit that these men are employes; secondly, there has been as yet no evidence one way or the other introduced as to the reason why the Alaska Salmon Company did not operate during 1940.

Referee Roden: I agree with you on that point, but on the first point raised by you, it seems to me that there ought to be not much dispute as to whether or not these men worked for the Alaska Salmon Company in 1939.

Mr. Oliver: I have not had an opportunity to check the list. I will be glad to do so, and if we find any errors in it we will so notify you.

Referee Roden: All right, sir.

Mr. Oliver: Mr. Resner, I understand you to state these were men employed by Alaska Salmon Company in 1939 and in other years. I cannot admit that is so because these employes change around greatly.

Referee Roden: I don't think whether they were employed before 1939, probably, is of great importance in this hearing.

Mr. Resner: That is right. This list is a list of those who worked for the Alaska Salmon plants during 1939. The only point I made is generally year to year the same workers go back to the same plants.

Mr. Oliver: I can't agree to that.

Mr. Resner: I am not offering it for that. That just happens to be the way the industry works—the same workers generally go back to the same plants from year to year, not exactly—and this list is a list of those employes who were employed in Alaska Salmon plants last season. And these plants weren't going to operate under any circumstances this year and, therefore, these people are unemployed not due to any labor dispute at all but because the canneries weren't going to operate under any circumstances.

Mr. Oliver: Are you introducing this as a list of people who were employes of Alaska Salmon Company in Alaska in 1939? And, further, does this list constitute a list of employes who have filed claims; each and every one of these have filed claims? [92]

Mr. Resner: I can't say exactly, but to the best of my knowledge yes.

Mr. Oliver: Otherwise, I don't see that it is relevent.

Referee Roden: We can check it.

Mr. Oliver: Well, restricted to that purpose, I have no objection subject to my right to check it to see whether it is correct.

Mr. Resner: I will recall Mr. Sam Young.

MR. SAM YOUNG,

resumed and testified as follows:

Redirect examination by Mr. Resner:

Q. Mr. Young, I want to direct your attention to the night of May 29, 1940. Did the union have a general membership meeting at that time?

A. Yes. That is right.

Q. And was the question of these negotiations discussed at that meeting? A. Yes, sir.

Q. You were present there? A. Yes.

Q. Minutes were made at that meeting?

A. That is right.

Q. I want to show you this paper and ask you if those were the men at the proceedings?

Mr. Madison: May I ask the purpose of these minutes?

Mr. Resner: Yes. These are the minutes of the union at the time in question. Statement was made by the witness an offer was made to the Canners with respect to signing for the 1939 San Francisco

(Testimony of Sam Young.)

wage scale and conditions. This is to substantiate the testimony of the witnesses, being a written record this transpired and the offer was made.

Mr. Madison: Of course, it is not a record any offer was made. It is a record they decided—a self serving document they were discussing making an offer.

Mr. Resner: It may be self serving. The witness has testified it was made. This merely adds to the testimony the witness has already given. As a matter of fact, their statements to the fact are self serving, so far as that is concerned.

Mr. Madison: I object on the grounds that it is incompetent, irrelevant, and immaterial, and it is a self serving statement. [93]

Referee Roden: I will admit it for what it is worth. Go ahead.

Mr. Resner: I want to direct your attention to those portions of the minutes having to do with the discussion of the 1939 contract. Will you find that in there and read the proposal finally adopted by the union, Mr. Young?

Mr. Madison: Are you offering the entire minutes or just portions of it?

Mr. Resner: Just that portion.

Mr. Madison: I think, if the document is going to be offered for what it is worth, the entire document should be offered for what it is worth.

By Mr. Resner:

I am offering that part of it which has to do with our case. Other parts are not relevent at all.

(Testimony of Sam Young.)

A. (Mr. Young) "Motion to reconsider carried, moved, seconded, concurred that we accept the final proposal of the Industry providing it contains a clause that the San Francisco 1939 wages and conditions will be retained and instruct our delegate in Seattle to sign for Local No. 5. However, if the agreement is worded in any other way, George Woolf be instructed to demand a memorandum or a supplemental rider to this effect.

"Moved and seconded, in view of the fact San Francisco Canners have refused to operate their canneries in 1940 and that we will not be employed this year due to the action of the Canners that we delegate our sister unions in Seattle and Portland full authority to negotiate their own agreements for 1940.

"Moved and seconded, that we go on record to sign the 1939 agreement offered by the industry under protest. Substituted for the whole, that we instruct Brother Woolf to sign agreements providing 1939 wages and conditions of San Francisco be retained in a clause to be inserted in the coastwise agreement; and also to the effect that all previous canneries operated by Local No. 5 shall be manned and operated by Local No. 5 crews. Moved, seconded, and carried."

By Mr. Madison:

Q. I understand what you just read to the Reporter appears from here to here?

A. That is right (Indicating) [94]

(Testimony of Sam Young.)

By Mr. Resner:

Q. That is the motion made, carried, and adopted at the meeting of May 29th of this year, Mr. Young?

A. That is right.

Q. And was that proposal negotiated with the union? A. Yes.

Q. How?

A. By mail and telegram.

Q. I show you this telegram and ask you if you can identify it?

A. Yes. May I read the telegram?

Q. That is a copy of the telegram.

A. Following motion passed, "That we instruct Brother Woolf to sign the agreement providing the 1939 wages and conditions of San Francisco be retained, in clause to be inserted in the coastwise agreement; and, also, to the effect that all canneries previously operated by Local No. 5 shall be manned, if operated, by crews of Local No. 5." Signed, "Sam Young."

Mr. Resner: I want to offer that telegram in evidence at this time.

Mr. Madison: Has it been identified as to the time?

A. (Mr. Young) That same night.

Mr. Madison: May 29th?

Mr. Resner: Yes. That can be verified by the records of Postal Telegraph, so far as that is concerned.

(Received in evidence as Claimant's Exhibit No. 15 and 16, respectively.)

(Testimony of Sam Young.)

Referee Roden: The Minutes will be No. 15 and the telegram will be Claimant's Exhibit No. 16.

CLAIMANT'S EXHIBIT No. 15

#15

ALASKA CANNERY WORKERS #5

Minutes
General Membership Meeting
Wednesday, May 29th, 1940

Karl Yoneda, Chairman Attendance: 550
M. Whaley, Recording Secretary
J. Acosta, Reading Clerk

Sister Rose Dellama of the Yanks are Not Coming Committee spoke on behalf of the Peace Rally to be held in Polk Hall Memorial Day and urged the Brothers to attend the meeting, and sell tickets. Also recommended that we elect one Delegate who will be our Yanks Are Not Coming Representative; and stated that Brother Filimon Vargas had volunteered to act in this capacity.

M:S, to concur in request of Speaker and elect Brother Vargas as Delegate. A:S, to elect three Delegates, two more besides Brother Vargas. Amendment carried.

Nominations:

Troche
Rendon
Gutierrez
Brusuelas
Noland—declined
Fukuda—declined

(Testimony of Sam Young.)

Aguirre—declined
Michel—declined
Glumaz—declined
Chow—declined
H. Roche—declined
Gallegos—declined

M:S, to close nominations. Carried. Bros. Noland, Fukuda, Aguirre, Michel, Glumaz, Chow, Roche, and Gallegos declined.

M:S, to elect the remaining four Brothers and Vargas, making a Committee of 5. Carried.

Reading of the Minutes of the Special Membership Meeting of May 24, 1940, were read. M:S, to adopt as read. Carried.

Reading of the Executive Board Minutes of May 28th, 1940.

Report of the Negotiating Committee and Coastwise Negotiating Committee was discussed at length.

Brother George Anderson discussed the Executive Board recommendations at length, and assured us that we will have a very good chance of getting our unemployment insurance, as we are having a hearing on this very soon; and the hearing will take about 8 or 10 days. Then this material has to be sent to Alaska and then re-discussed and sent back here.

Moved, that in view of the fact that we are not going to Alaska this year, let the problem become one of Seattle and Portland's only, and Local No. 5 instruct the Coastwise Negotiating Committee to this effect. No second.

(Testimony of Sam Young.)

M:S, that we reconsider our action taken at last Friday's meeting on the 1940 agreement. A:S, to to table this motion to reconsider.

General Membership Minutes, May 29, 1940.

M:S, to object to consideration of this motion to table. Motion Carried, 213 voting yes, and 75 voting no.

Motion to reconsider carried.

M:S, to concur that we accept the final proposal of the Industry, providing it contains a clause that the San Francisco 1939 wages and conditions will be retained, and instruct our Delegate in Seattle to sign for Local No. 5; however if the agreement is worded in any other way, George Woolf be instructed to demand a memorandum or a supplemental rider to this effect. A:S, that in view of the fact that the San Francisco canners have refused to operate their canneries in 1940; and that therefore we will not be employed this year, due to the action of the Canners, that we delegate to our sister Unions in Seattle and Portland full authority to negotiate their own agreements for 1940. A:A:S, that we go on record to sign the 1939 agreement offered by the Industry, under protest. Substitute for the Whole, that we instruct Bro. Woolf to sign the agreement, providing that the 1939 wages and conditions of San Francisco be retained in a clause to be inserted in the Coastwise agreement, and also to the effect that all previous canneries operated by Local 5 shall be manned and operated by Local 5 crews. Substitute for the whole carried.

(Testimony of Sam Young.)

M:S, that we hold the elections between June 1st and 15th, 1940. Carried.

M:S, that we comply with the Constitution and elect a Balloting Committee of 5. Carried.

Nominations:

Colon
Berolla
Fraticelli
Aguirre—declined
Glumaz
Acosta—declined
Valdez
Caballero—declined

M:S, to close nominations, Carried, Bros. Aguirre, Acosta, and Caballero declined.

M:S, to elect remaining five by acclamation. Carried.

M:S, to concur in recommendation of Executive Board that the Business Agent's salary stop June 15th, and that Brother Woolf be sent to the Maritime Federation Convention in place of Brother Noland. Carried.

M:S, to adjourn. Carried.

The meeting adjourned at 10:30 p.m.

Fraternally submitted,

M. WHALEY,

Recording Secretary.

(Testimony of Sam Young.)

CLAIMANT'S EXHIBIT No. 16

POSTAL TELEGRAPH

Night Letter

George Woolf
UCAPAWA Dist. No. 1
206 Bay Building
Seattle, Washington

Following motion passed quote: That we instruct Brother Wolfe to sign the agreement providing that the nineteen thirty nine wages and conditions of San Francisco be retained in a clause to be inserted in the coastwise agreement and also to the effect that all cannries previously operated by local five shall be manned if operated by crews of Local five.

SAM YOUNG

Charge: Alaska Cannery Workers Union

Att. This men are ready to go now on the basis of 1939 S. F. agreement.

Curtailment—pp. 11-p. 18—60 close period weekly.

1940—pp. 11, pp. 18—Enlarging the clause 84 hours, parag. B—Fishing area describe.

Maurice Whaley—question about meeting with the packers—I dis. mainly manning scale. 5 or 6 meetings, question of wage is transferred to Seattle —deadline of C & K's, memo. agree. to St. Sure, 1939 S. F. agree.

(Testimony of Sam Young.)

Mr. Resner: That is all, Mr. Young.

Cross Examination

By Mr. Oliver:

Q. Mr. Young, you testified yesterday, I believe, that you mailed to the Commission in Alaska various lists? A. Yes.

Q. Of employes of the various companies who were employes in 1939 who had filed claims?

A. Those who had filed claims I sent a list and attached to it a letter asking for hearing.

Q. Now, there has been introduced in evidence two lists, one entitled Alaska Salmon Company Personnel of 1939 season which consists of 250 names, and one Woodriver Personnel of 1939 Season which consists of 46 names. Do you recall whether you sent a list to the Alaska Commission containing 250 names and 46 names of individuals who were employed in 1939 by the Alaska Salmon Company and who have since filed claims? [95]

A. Well, personally, I have them separate for different canneries. If a man comes in and presents applications stating they qualify and I taking those claims and write to the Department of Unemployment in Alaska asking for hearing meeting. That was submitted here yesterday. But I can say many of the names from this list are names that have been sent in. Of course, there are some, that is, we have make arrangements. Some of them out of town can file the application out of town, which I haven't got, those Claimants, because the agency here claim that men out of town can file out of town; and those that

(Testimony of Sam Young.)

have not yet been filed can file between now and September. So, some of them can file and some of them have yet been filed.

Q. These actually constitute, do they not, the names on the union records of persons who were employed in Alaska by the Alaska Salmon Company?

A. That is right.

Q. And you don't know which, if any, of these people may or may not have filed any claims, do you?

A. Well, I would say the list could be checked up. That has been filed. And some of them have no record is for the reason some of them have been filed out of town. Some worked and some filed out of town,—like Oakland, San Mateo, Stockton, and Los Angeles. And I have no record of those filed out of town, and I have only record of those filed in San Francisco and return me the appliactions which I request for hearing—those that I know; we have a record to show that.

Q. Do you know whether or not any of these people have died since 1939?

A. Well, if those die they can not find no application. Those that work they can not find applications.

Q. I am merely trying to find out what this list is. This is a list of people on union records?

A. This is right.

Q. And you do not know that each and all of these people have filed claims?

(Testimony of Sam Young.)

A. I couldn't say off-hand, no. If they do it can be checked up in the record.

By Mr. Resner:

Q. At least, your union record shows every man on this list worked in a plant operated by the Alaska Salmon Company last year in Alaska?

A. Yes, sir. That is true.

Q. You copied this from the union list? The shipping lists? A. That is right.

By Referee Roden: [96]

Q. Then, I understand that this list is solely introduced for the purpose of showing the names of the men who worked for the Alaska Salmon Company last year, and for no other purpose?

A. That is right.

Mr. Resner: That is right.

By Referee Roden:

Q. What induced you to send up this list to Alaska?

A. Because, we introduced this list because that particular company not operate this year. They told us they are not going to operate, so those men are entitled for compensation because they are not operating. That is the reason we submit this particular cannery list.

Q. That is the only reason you sent it up there for? A. Yes.

Q. To Juneau?

A. I mean, I brought it up here for this purpose.

Mr. Resner: This list hasn't been sent to Juneau.

Referee Roden: That is what I wanted to find out.

Mr. Resner: All right, Mr. Young.

MR. *REVLES* CAYTON,

593 Market Street, San Francisco, California, being duly sworn testified as follows:

Direct Examination

By Mr. Resner:

Q. You are the Secretary of District Council No. 2, Maritime Federation of the Pacific?

A. That is correct.

Q. And are you an officer and member of the Maritime Cooks and Stewards?

A. I am a member, not an officer, at this time.

Q. You were last year?

A. No. I was Secretary of the District Council last year at this time.

Q. And you participated in negotiating this year for Alaska Cannery Workers?

A. I acted as negotiator for various negotiating committees during the last negotiations.

Q. That is, the negotiations which have just finished without a contract being reached?

A. That is correct.

Q. It is for the 1940 season?

A. That is correct.

Q. Did you serve in a similar capacity in 1939?

A. As Vice President of the Council I assisted the Secretary at that time in that capacity. I was Vice President in 1939.

Q. What Unions are connected with the Maritime Federation that were interested in these negotiations?

(Testimony of Revels Cayton.)

A. Alaska Fishermans Union, Alaska Cannéry Workers Union, the American Communications Association; [97] The Marine Firemen, Water Tenders, and Wipers Association.

Q. The Marine Firemen Water Tenders and Wipers Association is all one union.

A. American Communications Association, Machinists No. 68,—East Bay Machinists.

Q. Marine Cooks and Stewards?

A. Marine Cooks and Stewards. Marine Engineers Beneficial Association.

Q. Pilots? Master Mates and Pilots in on this?

A. No. I think that is all.

Q. Your Council, as I understand it, acted as a Coordinating Committee for these various unions, attempting to negotiate a contract for the current Salmon season in Alaska, 1940 season?

A. That is correct.

Q. When you say you acted as a Coordinating Committee, will you describe that? Tell us what you mean by that?

A. Well, unions prior to the opening of the season got together in this Coordinating Committee and generally attempted to work out a policy that would facilitate the reaching of agreements with the Packers. They would compare the various progress that they were making from time to time. That is about the general function of it, to coordinate the work, as it implies, of the various negotiating committees.

Q. Did you meet with representatives of the Packers?

(Testimony of Revels Cayton.)

A. I think two or three occasions I met with the representatives of the packers; namely, Mr. St. Sure and, I think it was, Mr. Moore.

Q. And do you recall approximately when those meetings started and when they ended? I mean, within what period of time were they held?

Mr. Madison: The two, you are referring to?

By Mr. Resner:

Q. I am trying to get the approximate date the negotiations started and the final time any meetings were held.

A. They started at the very first, I think, before they had met hardly with any of the unions at all. Then, there was on in between, the middle, with the Alaska Fishermans Unions. And the final meeting was on the last deadline set at midnight, around that day leading up to midnight.

Q. That was in May?

A. Yes. That was about in the first and last meetings, one in between. [98]

Q. Now, I want to ask you a question, Mr. Cayton, with regard to these negotiations. In your opinion were these negotiations carried on by the representatives of the operators in good faith or not?

A. Well, prior to this time, in the various negotiations we have dealt directly with the representatives of the packers.

Q. When you say prior to this time what do you mean? A. I mean, previous seasons.

Q. Previous years?

(Testimony of Revels Cayton.)

A. Previous years. That is, with the representative of the Red Salmon Company, of the Alaska Packers; and their men would negotiate directly with the heads of these companies and their advisors were men who had a great deal of practical experience in the field and they knew the Alaska Industry just as well as the men who were going to Alaska knew it—as men like Mr. Tichenor and the rest of them knew more about the Salmon Canning Industry than I; knew as much about it as any of the fellows negotiating. And on the basis of that they were able to hammer out some sort of agreement. This year this practice was not carried out. The negotiations were given over to a group of negotiators for them who first were not men who had any practice at all in the industry, who were attorneys, and who were not authorized to commit the Packers as such. For example, if there was anything in the question of a dispute the attorneys did not have the power to say, "Well, o.k. That will go." And, "That is agreed on." And, "I will go for that." Well, the answer was, "Well, we will have to take it back to the Packers and see what they say about it." In other words, it was sort of second hand negotiations.

Q. Stopping you there, Mr. Cayton, and referring to the authority your Committee and your Representatives from the Union had from your unions, had you come in with definite proposals that could be accepted? That the union had authorized you to go for? A. Yes.

Q. Negotiations for the unions had been pre-

(Testimony of Revels Cayton.)

viously authorized by the union what the unions wanted?

A. That is right. And if there was a compromise. For example, the unions wanted this. If there was comprising the Negotiating Committee had power to take that back and recommend to the membership and they practically can bind the union to such and such an agreement.

Q. In other words, they stated in their opinion the union would go for that and they practically committed the union to it?

A. That is right. [99]

Q. They were sure the union would go for it after they took it back? Is that the point you were making?

A. Yes. And also the union felt this. We were glad. If the Packers wanted to have attorneys in the field that is o.k., but we did feel if they would have had a couple of practical men, Mr. Commissioner, a couple of practical men who had been to Alaska and knew the conditions and who could talk with the men just exactly what the problem was, on that basis they could trash it out. And we felt and all the unions felt that the attorneys should have been augmented by the men representing the Packers who knew something about Alaska and something about the conditions there, and what the beef was all about. And, as it was, we were talking with men who didn't know Alaska from Florida.

Q. Did the unions come in with definite proposals, Mr. Cayton? A. They did.

(Testimony of Revels Cayton.)

Q. And how were those proposals submitted?

A. In the form of a written agreement, proposed agreement, to constitute the basis for negotiations.

Q. In other words, did the Alaska Cannery Workers submit such a proposed written agreement for 1940?

A. I understand most of their work was being done in Seattle. It was mainly a question of wages, and a few things like that.

Q. Wages and Manning Scale in San Francisco to be incorporated in a memorandum agreement?

A. That is correct.

Q. But you know, do you, whether or not the union submitted their offers to the Canners?

A. All unions made concrete proposals.

Q. In written form? A. Yes.

Q. Did the Canners come back with anything in written form?

A. Not according to my knowledge. According to my knowledge of the thing they carried on a process of rejecting things put by the union and stating, "We must have certain reductions all down the line," to all the unions.

Q. In other words, they said they had to reduce the things the unions had last year all the way down the line?

A. I think the Packers, or the representatives of the Packers, will state here that the general idea was there had to be a substantial reduction in the operating expenses this year and every union was going to have to take a slice of that cut. That was

(Testimony of Revels Cayton.)

the frank statement at the beginning and their frank statement at the end. I think it will be their frank [100] statement here.

Q. And I want to draw your attention to this fact. For instance, let us take the Alaska Fishermans Union, for example. Do you know what they proposed to the Operators this year? What they wanted?

A. The Alaska Fishermans Union would have gone for the same agreement they had in 1939, the previous year. They did, however, want some small changes where the Company had, for example, not given adequate gear on some of the ships, and what not, and were to be in the agreement but still didn't furnish it. And they wanted penalty clauses if this wasn't furnished by certain times. Also, they wanted equalization in the travelling money for the Alaskans. Now, they felt in connection with this that a great deal of adverse publicity was coming to their union and people in the states generally because the resident fishermen were not getting the same wage in regard to the present season there as fishermen who came from the States. And they wanted an equalization of this. However, it is my frank opinion that these things were very minor and if the same price on fish as of 1939 could have been given to the fishermen there would have been nothing standing in the way for reaching an agreement.

Q. Now, with respect to the fact the fishermen offered to renew their 1939 agreements except as you stated here, did the Packers come back with a coun-

(Testimony of Revels Cayton.)

ter proposal in writing, with any other concrete form?

A. Mostly they come back in writing, so far as I saw, were a series of letters stating that—placing certain deadlines as to the negotiations—and if the negotiations weren't concluded by those times that everything would be off. Now, it is possible that correspondence took place between the Packers and the Unions that didn't come to my attention. It might have come to a meeting and been reported verbally, some of these things, and might have been in writing. I couldn't say definitely in regards to that.

Q. In your capacity as Secretary of the District Council and Representative of the Coordinating Committee, was it your function to communicate the position of the unions to the Packers?

A. It was. When joint positions were taken, why, we did that.

Q. Did you write them a series of letters?

A. I did. [101]

Q. I want to show you first the letter of April 9, 1940, addressed to the Industry, attention Mr. Paul St. Sure, signed by yourself, and ask you if that letter was sent by you?

Mr. Madison: May I see that? (Indicating)

By Mr. Resner:

Q. Would you look at that letter, Mr. Cayton, and tell us whether that is a copy of the letter you sent to the industry in care of Mr. St. Sure?

A. It is.

(Testimony of Revels Cayton.)

Q. At this time, Mr. Referee, I want to offer this letter in evidence as Claimant's next in order.

(Received in evidence as Claimant's Exhibit No. 17)

You sent this letter Mr. Cayton on April 9, 1940, to the Industry signed by yourself, Secretary of District Council No. 2? A. That is true.

Q. Copies of this were sent to Alaska Salmon, Red Salmon, and Alaska Packers. I want to offer this, Mr. Referee as Claimant's next in order.

(Received in evidence as Claimant's Exhibit No. 18)

CLAIMANT'S EXHIBIT No. 18

April 9, 1940

Alaska Salmon Industry, Inc.,
230 California Street
San Francisco, California

Gentlemen:

Replying to your letter of April 9.

Immediately upon the receipt of your letter the unions affiliated with the District Council #2 held a meeting at which your letter, which was considered more in the nature of an ultimatum, was discussed by all of the interested unions in this district.

After a full and complete discussion of your letter all of the union to which you referred in your letter decided that they are ready, able and anxious to continue, and if possible complete contract arrangements with you at the earliest possible time.

(Testimony of Revels Cayton.)

For the past several months all of these union have signified their intention to negotiate an agreement with you and in particular to conclude an agreement within a reasonable time before your vessels usually sail.

The proposals that you have made so far, are and have been unacceptable to the unions and we feel that your present attitude in endeavoring to force through a contract and by delivering ultimatum after ultimatum impels us to question the good faith on your part.

To list a few of the inadequate proposals you have made: you desire for instance to eliminate the $75.00 penalty clause from Alaska Fishermen's Union, which clause has been in effect for 15 years; you wish other concessions from Alaska Fishermen's Union which they have enjoyed for many years and which they do not feel they should relinquish; with respect to the Marine Cooks & Stewards you apparently wish to revert to the old-style practice of not recognizing the 8 hour day and you desire to eliminate most of the compensation heretofore paid for overtime; your proposal also endeavors to cut the season for the Alaska Cannery Workers to approximately 35 days less than it has been.

We wish to direct your attention to the fact that the Alaska Salmon industries are being exploited not solely and only for the benefit of the corporations that own and maintain the plants but are being exploited as well for the benefit of the people

(Testimony of Revels Cayton.)

that operate the plants and have for many years enjoyed the major portion of their income therefrom. These workers must receive their fair portion of the wealth of this industry and we cannot accept any proposal, let alone any ultimatum that has for its purpose the elimination of conditions heretofore enjoyed.

It was our hope that at the outset of this season's negotiations it would have been possible to sit down around a table, with the veterans of the Salmon Packing industry who have represented the Company for so many years, and who are practical men, and hammer out an agreement. Instead of this there has been a series of half-hearted meetings called by yourselves. The negotiators from the various union report that your committee has been able to make no direct answers or binding commitments.

The spirit of your letter is an attempt to saddle upon all of these unions an arbitrary attitude toward the Packers and a reluctance to bargain with them. This we emphatically deny. We have endeavored, ever since we first suggested that negotiations be commenced, that such negotiations be speeded toward the end that we reach a speedy and amicable conclusion. We feel that your dilatory tactics have been the cause for the last minute rush.

We again wish to advise you that we will meet as often and as long as necessary in order to conclude this agreement but we again state to all concerned that if the officials of your various Com-

(Testimony of Revels Cayton.)

panies would sit around the table with us, and with their counsel if they choose, negotiations could probably be concluded within a short time.

Very truly yours,

DISTRICT COUNCIL #2
MARITIME FEDERATION
OF PACIFIC
REVELS CAYTON
Secretary

uopwa—34
c/o Alaska Salmon Company
Red Salmon Company
Alaska Packers Ass'n.

I want to direct your attention, Mr. Cayton, to that memorandum to the union dated May 2, 1940. Did you send that memorandum to the unions?

A. Well, there is one. It is divided into two sections here. There is a memorandum to all unions.

Q. Were copies of this To all Unions sent to the Packers?

A. Yes. This was. (Indicating) This Memorandum to All Unions.

Q. Those are just the letters identifying the Memorandum, are they not, Mr. Cayton?

A. Yes, I guess that is true.

Q. This is a memorandum of May 2, 1940, addressed Memorandum To All Unions, being unions in the District Council Maritime Federation, Dis-

(Testimony of Revels Cayton.)

trict No. 2, signed by Revles Cayton, Secretary, outlining the union's position on the attitude of these negotiations. And this was sent to the following operators representatives: To Mr. St. Sure. To the Red Salmon. To the Alaska Packers. That is, these are the letters with which the memorandum was sent to the Packers, is that correct?

A. That is right.

Mr. Resner: I want to offer this as Claimant's next in order, Mr. Referee. They are together.

(Received in evidence as Claimant's Exhibit No. 19) [102]

CLAIMANT'S EXHIBIT No. 19

May 2, 1940

Memorandum to all Unions

This afternoon in the office of District Council #2 of the Maritime Federation of the Pacific a meeting was held at which all of the Unions who engage in the Alaska Fisheries were present. There was a general discussion and resume regarding the negotiations being carried on between the negotiating committees of the various unions and the representative of the Packers.

After a lengthy discussion it was the consensus of opinion that the Packers have evinced no desire to engage in the Alaska Fisheries this year. In making a statement such as this no positive basis for the statement could be given, but drawing upon the history of negotiations for many years last past,

(Testimony of Revels Cayton.)

no other conclusion could be drawn from the facts presently before us.

All of the unions have virtually agreed to accept the basic rates of pay paid by the Packers in 1939 and suggested that there be various clarifications of certain ambiguous portions of those contracts. There was only one other important factor in negotiations to be considered and that is the request of the unions that the residents of Alaska be paid on the same basis as those workers who go to Alaska for the salmon season.

We have referred in this memorandum to the "negotiations" between the unions and the canners. The use of the word "negotiations" is probably a misnomer. There have really been no negotiations; that is not due to any fault on the part of the unions, but is due to the recalcitrant attitude of the canners in apparently delegating full authority to J. Paul St. Sure, their attorney, who has been supplied with a series of "yes" and "no" answers and beyond those answers he will not go. So that the prior custom of sitting around a table and discussing the various aspects of contracts has, at least for this season, been eliminated. Thus the element of personal contact in negotiations is entirely lacking; there has been no real discussion and no real bona fide attempt on the part of the canners to enter into agreements.

In view of this conduct on the part of the Packers we have been forced to come to the above conclusion that the packers have no real desire to go to

(Testimony of Revels Cayton.)

Alaska this season but are pretending they wish to operate their canneries only for the purpose of endeavoring to reduce wages approximately 20% and at the same time eliminate many gains and improvements in working conditions that the workers in the industry have enjoyed for many years.

We have heard, and on fairly good authority, that the packers have been informed that if they do not operate this season, and through such operations contribute certain taxes to the territory of Alaska, that next year increased adjustments will be made in the Alaska taxes in order to compensate the territory for the willful refusal of the packers to operate in the 1940 season. Undoubtedly, part of their present plan is to make their offers to the various unions so unattractive that the unions will not accept the terms of the packers and thus the packers will be able to blame the unions for the inability of the packers to engage in the fisheries, and use this excuse as a defense and argument if the territory should increase taxes on the packers. This statement regarding the taxes may not be true, but if true, it certainly would be a reasonable part of the plan of the packers in making their offers so unattractive that the unions would not accept them.

The packers have set May 3rd at midnight as the deadline for entering into an agreement. We sincerely hope that they want to enter into an agreement, and all negotiating committees of the various

(Testimony of Revels Cayton.)

unions, including this Council, stand ready to meet with the Packers at any and all times between now and midnight tomorrow or any further time to which they wish to extend their so-called negotiations.

Fraternally yours,
REVELS CAYTON
Secretary

uopwa—34

May 3, 1940

J. Paul St. Sure
Alaska Salmon Industry, Inc.
230 California St.,
City

Dear Sir and Brother:

You will find enclosed copy of a memorandum to all unions that was sent out last night; also carbon copy of a letter sent to A. E. Harding in reference to the position taken by our Council in connection with the opening of the Karluk cannery.

Fraternally yours,
REVELS CAYTON
Secretary

uopwa—34

(Testimony of Revels Cayton.)

May 3, 1940

Red Salmon Canning Co.
64 Pine St.
City

Attention: Mr. Peterson

Dear Sir and Brother:

You will find enclosed copy of a memorandum to all unions that was sent out last night; also carbon copy of a letter sent to A. E. Harding in reference to the position taken by our Council in connection with the opening of the Karluk cannery.

Fraternally yours,
REVELS CAYTON
Secretary

uopwa—34

May 3, 1940

Alaska Packers Association
111 California St.
City

Attention: Mr. Tichner

Dear Sir and Brother:

You will find enclosed copy of a memorandum to all unions that was sent out last night; also carbon copy of a letter that was sent to A. E. Harding in reference to the position taken by our Council in connection with the opening of the Karluk cannery.

Fraternally yours,
REVELS CAYTON
Secretary

uopwa—34

(Testimony of Revels Cayton.)

Q. That memorandum outlines the union's position and attitude to the negotiations?

A. Yes, it does.

Q. I want to direct your attention to that time, the first part of May this year; did you have a meeting at that time with the representatives of the United States Maritime Board and Packers Representatives, Mr. Cayton? A. Yes, we did.

Q. Can you tell us when and where that meeting took place? Who was present?

A. I think it was the 3rd. The 3rd was the deadline set, I think.

Q. May 3, 1940?

A. Yes, that is May 3rd. Well, it took place around—I guess it was around five o'clock of May 3rd, in the office of Alaska Salmon.

Q. Who was there?

A. Mr. Gertz, Federal Mediator; Mr. St. Sure; and myself.

Q. Mr. Gertz—William Gertz was the representative of the Maritime Labor Board?

A. Right.

Q. Had he been authorized by the government in this matter? A. That is right.

Q. How did Mr. Gertz happen to get into the case, into the negotiations?

A. We received a letter, that telegram, I think. The Maritime Labor Board had interested itself in trying to see that successful negotiations were conducted and they sent this wire to us, which we ac-

(Testimony of Revels Cayton.)

cepted; and, I believe, that the Packers did likewise.

Q. I show you that wire, Mr. Cayton, and ask you if that is the wire you received? (Indicating)

A. That is the wire.

Mr. Resner: This is a wire from Robert W. Brewer, Chairman of the Maritime Labor Board, directed to Mr. Cayton, Secretary of the American Federation of Labor, District Council No. 2, Balboa Building, San Francisco, dated Washington, D. C., May 3, 1940, offering the services of Mr. Gertz in these negotiations.

I offer this as the Claimant's next in order.

(Received in evidence as Claimant's Exhibit No. 20)

CLAIMANT'S EXHIBIT No. 20

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MRT RXF82 100 GOVT 1 EXTRA—F

WASHINGTON DC 3 248P

Revels Cayton—Secy Maritime Federation of the Pacific District Council #2 Balboa Bldg

1940 MAY 3 PM 2 57

Having been advised by its representative Mr. W T Geurts that controversy exists between the workers whom you represent and the Alaska Salmon Industry Incorporated which threatens to interfere with the free flow of waterborne commerce. The Maritime Labor Board hereby proffers the services of its mediator Mr. Geurts in the hope that he may

(Testimony of Revels Cayton.)

be of assistance in resolving the questions at issue into a mutually satisfactory agreement. The Board takes this action in the public interest and in conformity with the duties imposed upon it by Title X of the Merchant Marine Act of 1936 as amended.

ROBERT W BRUERE
Chairman Maritme Labor
Board.

Q. You had that meeting. What was said?

A. We went over the various status's of negotiations in the various unions. I think that it can be agreed here by Mr. St. Sure and Mr. Moore that the main ones we were interested in was the question of the fishermen and reduction that the fishermen were asked to take. [103]

Q. What kind of reduction was that?

A. I think it amounted to about 17%, I am not sure, on the price of fish.

Q. 17% reduction over last year, the 1939 season?

A. That is right. And negotiations shaped up this way. If the fishermen could be gotten over that hump, well, the rest of the unions wouldn't be difficult to settle with them for this reason—that the fishermen and cannery workers constitute the unions whose very life depends upon the Alaska season. The rest of the unions are not so dependant on the Alaska season, inasmuch as they can find

(Testimony of Revels Cayton.)

other means of work. But these men follow
industry and they are pretty much up again
if they don't go to Alaska. Therefore, what
agreement would be reached by these two m
companies—not companies, two major unions—
the other unions would immediately sort of set t
sails in accordance with that progress. And if
17% could be gotten over it would be a very
matter, and the Company would at the same t
accept the 1939 standards for the rest of the uni
the season would have been on. There would b
question about that.

Q. In other words, at that time, Mr. Cayton
I understand your testimony, you told Mr. St. S
and Mr. Moore that so far as the other unions w
concerned, including the Alaska Cannery Work
Union, they would go on the basis of 1939
Francisco Agreements? A. Yes.

Q. If they could come to their agreement w
the fishermen and not cut them below last year

A. If the fishermen could have been gotten o
and the companies would have accepted 1939 agr
ments for last year it would have been clear saili

Q. For all these men that went last year?

A. That is right.

Q. Mr. Cayton, as Secretary of the Distr
Council, whenever any of your unions are engag
in strike that matter is taken up through the Co
cil, is it not? A. Yes.

Q. And approval obtained from the Council

A. Yes.

(Testimony of Revels Cayton.)

Q. Now, in connection with this current 1940 Alaska fishing season was there ever any talk of strike? A. Not that I know of.

Q. Did any of the unions or the Council declare any strike or authorize any strike? A. No.

Q. In other words, there is no strike that has been declared against the Alaska Salmon Industry?

A. We didn't have agreements with none to strike about. [104]

Q. And none of the members of any of the Unions affiliated with your Council have done any work in Alaska this season, have they?

A. No, we got froze out complete.

Q. What is the attitude of the unions today, Alaska Cannery Workers Union, with regard to the season? On what terms are they willing to go now and have they been willing to go?

A. Well, all the unions would go for 1939, if we could get it.

Q. They would go tomorrow?

A. Sure we would. We would have gone that night.

Q. May 3rd? A. Yes.

Q. Before the deadline? A. Certainly.

Q. That was before the deadline? A. Yes.

Cross Examination

By Mr. Madison:

Q. Mr. Cayton, as Coordinator for the Maritime Federation Bay District Council No. 2, how many of these meetings here did you attend?

(Testimony of Revels Cayton.)

A. I attended three meetings.

Q. How many with Mr. Paul St. Sure?

A. To my best knowledge, three meetings.

Q. At which Mr. St. Sure was present?

A. That is right.

Q. And was one of these meetings with Mr. Gertz, the Federal Mediator?

A. That is right.

Q. Now, as I understand it, the meetings that you have reference to where bad faith was employed were the three meetings you have referred to?

A. No, not completely. You see, as Coordinator I had my finger tips on the reports almost daily. In fact, whenever the unions got through negotiating they telephoned me on arriving back to their union hall just what progress they made. So, I would say, I had my fingertips on the general pulse of the thing more than any one individual.

Q. In other words, you base it on those three meetings and also on the reports you got from the unions, themselves, who had been in the negotiations? A. That is right.

Q. Now, as I understand it, one of the things you mentioned particularly was the fact that these meetings were not held with anybody who was familiar with the actual conditions in Alaska. Is that correct?

A. It was our opinion that much more progress could have been made, though I don't say that

(Testimony of Revels Cayton.)

agreements could not have [105] been reached by Mr. St. Sure. I do think it was the opinion of the unions, and as our letters there will show, that much more progress could have been made had we had a practical man who knew, for example, something about Alaska to work with. For example, I telephoned Mr. Tichenor when the first season was called off.

Q. You mean the Central Alaska?

Mr. Resner: Central and Southern.

A. That is right. And told him why on earth didn't he get somebody who knew something about Alaska up there? Who knew something? And why he and others didn't sit in? And they would sit down and didn't challenge the unions with ultimatums. We could get somewhere! And *we* didn't commit himself very much in regards to it, as to introducing or having someone besides the attorneys sit in.

Q. Now, in prior years before the formation of this Alaska Industry, Salmon Industry, Mr. Tichenor has conducted the negotiations for the Alaska Packers, has he not? A. That is correct.

Q. Have you been sitting in with these negotiations?

A. As Vice-President of the Council last year I assisted, acted as assistant to the Secretary, Mr. S. R. Brown, and sat in all the coordinating meetings and was familiar with it.

Q. You didn't sign it?

(Testimony of Revels Cayton.)

A. I think I sat in one or two meetings with Mr. Tichenor on behalf of the Marine Cooks and Stewards. I was an official of the Marine Cooks and Stewards at that time.

Q. Then, you don't know whether Mr. Tichenor, also, had to refer matters back to his company when the questions came up, do you?

A. Let me make clear what I am getting at. When you work on an agreement you can sit down over a table and it is the attitude in which you sit down over the table. If you say, "We want so much money for coffee time, here," and, "So much money for overtime, there." And, take some of the practical men who have been to Alaska? They say, "No. You know, it doesn't take that much time. It takes that much time there." And the union says, "Maybe that is right. We will go half way." And then you reach an accord. But you do that on the basis of persons having some actual experience and actually working on the problem confronting the thing. And when you say, "Somebody rope a line here," and he doesn't know whether it is a hook or sinker, you can't negotiate with people like that. We don't try to go in Court and do things. We say they can have lawyers and think they should to protect their [106] interests, but along with the lawyer should be at least one practical person who has been somewhere north of San Francisco to be able to negotiate and work out an agreement. And when you don't have such practical negotiations, then negotiations become a series of high powered maneuvers. And that

(Testimony of Revels Cayton.)

is what this whole negotiations was. There wasn't any time they went down and sat over a table, according to the reports of the Committees, and where they discussed pro and con whether this should be granted or that should be granted.

A general policy was established and formed at the very first meeting there has got to be substantial cuts. And that is the score!

Q. Did they explain why they wanted substantial cuts? A. Yes. Said they was not making any dough.

Q. And they said they wanted substantial cuts? Took that position throughout the negotiations?

A. That is correct. In all honesty it is correct.

Q. They made that statement? There is no question in your mind about it?

A. Well, the best evidence of it—there was no season!

Q. No offer was made for substantial cuts?

A. For 1939 Agreements the unions said. They felt that.

Q. What union are you referring to now?

A. I am referring to all the unions, including the Alaska Cannery Workers Union. If they would have given the fishermen the 17%, and offered 1939 agreements to the rest of them? If they would have made this offer, "We will go for 1939 agreements", the union would have snapped at it.

By Mr. Resner:

Q. 1939 San Francisco you are talking about, it is?

(Testimony of Revels Cayton.)

A. Yes, sir. They would have snapped at it!

By Mr. Madison:

Q. Now, in spite of the fact all the unions were told the employers wanted reductions from the 1939 agreement—that is correct, isn't it?

A. I didn't get that.

Q. It is a fact, isn't it—I think you have already testified to this—all the unions were told that the employers weren't making any money and that they wanted reductions from the 1939 agreement?

A. That is right.

Q. No offer was made by the union at any stage of the game for anything less than the 1939 agreement, was there?

A. They don't! Unions are not in a practice of cutting down on gains that they have already got.

[107]

Q. I understand that. But the answer to my question is No?

A. The answer to your question is no.

Q. Now, do you know of any unions of your own personal knowledge that offered to go to Alaska on the 1939 San Francisco agreement?

A. Yes.

Q. Which? And when was the offer made?

A. Let me make this clear. There are numerous unions that would have gone—I mean, made the statement.

Q. To you?

A. Not only—wait just a moment, please! First, that night when we were there with St. Sure it

(Testimony of Revels Cayton.)

was stated there to them and was generally looked on and agreed there, I think, that if the fishermen should be gotten over and such an offer would be made for the 1939 agreements to the rest of the unions that they would all accept it. There was no doubt about that.

(The Reporter read the last question.)

A. The Alaska Fishermens Union wanted to go for the 1939 agreement, that is, the same price on fish provided that they could have certain small adjustments made. This was later accomplished in Seattle. These adjustments were made and they went. The whole central issue, of course, was the question of the price. And if they could have got the 1939 price they would have gone, and adjustments would have been very trifling.

Q. Isn't it a fact, if I may interrupt you there, that the Alaska Fishermen offered to the employers to go on the 1939 agreements without any conditions? And, if so, when was the offer made and to whom? A. Without any conditions?

Q. Yes?

A. You see, if you are going to build up this question over tradition, like big conditions? Or on to the 1939 agreement, like a big thing?

Q. I am not trying to build up anything. I am just trying to get my questions answered.

A. I am trying to answer it for you. For example, one of the things they wanted in addition to the 1939 Agreement was some lines so that when the scows came along to unload their fish these

(Testimony of Revels Cayton.)

safety lines would be there to keep the men from possibly being hurt. That is one of the things they had to put up a big beef, and one of the conditions they wanted. And the conditions they put on it were things of this nature, things that could be adjusted very simply. The thing negotiators said they couldn't understand why they weren't adjusted should have been adjusted. So, if you put it that way, you can [108] see the conditions did not amount to much.

By Mr. Resner:

Q. Mr. Cayton, when you use this word "beef", you mean controversy or argument or difference of opinion?

Mr. Madison: I think "beef" has become well known in the English Language in the last few years.

Referee Roden: *I* will soon be in the dictionary, I guess.

A. I can go on with some of the other unions, if you wish?

By Mr. Madison:

Q. That is the best answer you can give to my question?

A. Well, I think that is the answer, yes.

Q. What is the next union?

A. The Alaska Cannery Workers. 1939 agreement here out of Frisco would have been satisfactory, but they wanted to go for! If you fellows could have got 1939 out of Seattle, which is a sub-

(Testimony of Revels Cayton.)

stantial reduction, well, it would have been o. k., I suppose, with you; but the men wanted 1939 out of San Francisco. In other words, they would have gone for what they had last year. And the Packers knew it as well as we knew it. If they said, "O. K. boys, you go as you went last year." We would have been on those ships so fast it would have made your head swim.

Q. Do you know if that offer was communicated to the Canners any time prior to May 29th, as was testified to yesterday by four five witnesses on the stand?

A. Alaska Cannery Workers?

Q. Alaska Cannery Workers Union?

A. That is the position they were taking in the coordinating committee.

Q. The question is, When was it communicated, if you knew? Whether it was communicated or not? You said you knew it was communicated, and I asked you if it was communicated prior to May 29, 1940?

A. I am not going to say it was communicated, because I was not at the meetings and nothing put in writing. That is the thing they reported to the negotiating committee.

Q. And that is all you know about it?

A. Yes.

Q. And that is the same with all the rest of these unions?

A. That is right.

Q. Now, we get down—

(Testimony of Revels Cayton.)

A. (Interrupting): May I make one exception to that? And that is the Alaska Fishermans Union, which is the third meeting. There was one at the beginning of the season and one [109] in the middle—and that is the meeting I was in with the Alaska Fishermans Union and went through their entire agreement with them and Mr. St. Sure. So, I can speak first hand in connection with that union.

Redirect Examination

By Mr. Resner:

Q. What date was that, Mr. Cayton?

A. I don't know.

Q. Approximately?

A. Things were happening so fast around there. When was that, Mr. St. Sure, about?

Mr. St. Sure: April 30th.

A. April 30th.

Q. That is when the fishermen communicated their offer?

A. Yes. That is the meeting I sat in with them, I think.

By Mr. Madison:

Q. That is the meeting you testified to the offer before. You testified they would go for 1939 under certain conditions, you say are unemportant.

Now, I think that you testified in regard to this meeting with the Maritime Commission with Mr. Gertz. Do I understand that at that meeting there was communicated to Mr. St. Sure or to the repre-

(Testimony of Revels Cayton.)

sentatives of the Canners present that if this 17% reduction that they were asking for could be gotten out of the way that all the rest of the men would go on the 1939 agreement. Was a statement to that effect made or was it just your understanding?

A. Here is what happened. We went over what the various unions wanted and what not. And, you got to figure how negotiations are conducted. A union raises certain demands and then certain conditions arise. And then they review those demands in the light of those conditions. And then they slack off. It doesn't look so good. And then they accept a compromise. And it goes that way. You dicker around. That is the way negotiations are conducted. Now, it was the consensus of opinion there, and I think Mr. St. Sure will back me up when I say he and Mr. Moore were of the opinion if the fishermen would be gotten over, that hump gotten over, the rest of the things could be adjusted. And it was stated by myself, "If you fellows can just get over with the fishermen, we can adjust the rest of this stuff." And there is time and time again I stated that to them. And it was the opinion—I am not supposed to be quoting Gertz, he can speak for himself. I will only speak for myself. But it was obvious from that meeting that if the Packers could get a situation like this: whereby the other unions would accept 1939 out of Seattle, which would amount to the cut reduction for those and the fishermen would accept [140] the

(Testimony of Revels Cayton.)

17% why, they would be able to go. I mean, that was pretty clear what their position was.

Q. No one made any statements to that effect?

A. Certainly, because that is what they were asking from practically all the unions.

Q. That is what the employers were asking?

A. That is right.

Q. But there was no indication by any of the unions that they would do that, of course?

A. No. That is correct. And, this was almost their platform: 1939 out of Seattle and fishermans 17% reduction.

Q. Now, all these various things were discussed at this meeting with Gertz, weren't they? All the conditions *rasselled* around with? And there was discussion there?

A. That is true. I would like to also state it came to my attention there. I can say at the time we were discussing them that I think the whole report in connection with why the season didn't go through has already been written.

Q. That is your opinion?

A. More than opinion.

Examination by Referee Roden:

Q. What do you mean by 1939 out of Seattle?

A. Well, you see, 1939 out of Seattle was at the lower rate. The scale, you see, of salary was lower, and what not, in Seattle than 1939, out of San Francisco.

Q. You mean, 1939 Seattle Agreement?

(Testimony of Revels Cayton.)

A. Yes, that is what I mean. This would have—well, the fellows have tried to estimate what reduction that would be. It would vary. Some unions as much as 20%, and what not, in what they got out of San Francisco in 1939.

Q. No agreement was reached with the fishermen?

A. The fishermen? That night we went over there, at midnight, and Mr. Gertz telephoned them and asked them "Anything new?" at midnight, and they said, "No, nothing new." And the fishermen rejected the 17%. Now, that was the key, because the Fishermens Union. You see, Mr. Commissioner, the Unions, like the sea going crafts, Firemen, Cooks, and these unions—have other means for their men to go to work, you see. So, if the fishermen ever reached an accord and if they would have granted the 1939 for the Cannery Workers, well, then the heat would have been on the unions and the other unions wouldn't have stood in the way because then we would have called a Council meeting and gone after them. The Packers know about as much as the unions and as we do and they know real good politics about these unions—and that is true!

Recross Examination

By Mr. Madison:

Q. It is a fact, isn't it, in these negotiations all the members [111] of the Maritime Federation have a definite understanding and agreement

(Testimony of Revels Cayton.)

that one union won't sign up until they are all satisfied to sign up?

A. Yes. But you can't take it——

Q. (Interrupting): Is that a fact or not?

A. The unions before anyone signed try to reach an accord generally. And the factors as to what makes them reach an accord is the thing I am stressing here and which can't be underestimated.

Q. The fact of the matter is, isn't it, you have always taken, the Maritime Federation has always taken, the position one union won't sign up until all members of the American Federation are ready to sign up? A. We sign jointly.

Q. And you advise the Packers to that effect?

A. Yes. And the very fact we do this would in this case be a safeguard for the two big unions, because once they were ready to sign then they would be able to move as a group and that would mean pressure would be on all the smaller ones to come in. And unions like A.C.A. and Radio Operators are continually quarrelling because they say, "We are one of the small unions. When the big unions sign up we have pressure on us." So, signing jointly wouldn't work against the Packers, but in their favor. Because they would have the pressure of forcing other unions in line, which they have done on many occasions, because it is their policy to sign with the big ones as in previous years and put the heat on the small ones.

By Mr. Resner:

Q. You are saying that it has been their policy?

(Testimony of Revels Cayton.)

A. Policy of the Packers, yes. They know that game!

By Mr. Madison:

Q. But the Cannery Workers won't sign until the Fishermen are ready to sign. Isn't that it?

A. The Fishermen are ready to sign?

Q. Yes.

A. The Cannery Workers won't sign until everybody is ready to sign—neither will the Fishermen.

Q. And the Fishermen won't sign until the Cannery Workers reach an agreement?

A. No one will sign without the other.

Q. Nobody will sign until each union is ready to sign?

A. That is correct. You see, if we didn't have that sort of thing you could take the Radio Operators of about fifty men and they would be able to hold the whole season up. And neither can, oh, any of the other unions so vitally involved. It, in other words, makes Alaska Cannery [112] Workers and Alaska Fishermen the ones who practically determine the season.

By Mr. Resner:

Q. So far as the unions are concerned?

A. That is right.

Mr. Madison: No further questions.

Redirect Examination

By Mr. Resner:

Q. Mr. Cayton, Mr. Madison asked you about

(Testimony of Revels Cayton.)

whether you knew whether the offer to go on the 1939 San Francisco Agreement had been communicated to the Packers prior to May 27th. I want to direct your attention to that meeting of May 3, 1940, with Mr. St. Sure and Mr. Moore at which Mr. Gertz was present.

A. Wait a minute, Herb, I didn't follow you?

Q. Mr. Madison asked you about whether or not you knew whether the offer of the Cannery Workers to go to Alaska on the basis of 1939 San Francisco Agreement was communicated prior to May 27th of this year?

Mr. Madison: May 29th.

By Mr. Resner:

Q. May 29th? In other words, he set that as the date, wanting to know whether before that date the Cannery Workers had communicated their willingness to go on the basis of 1939 agreement. In that connection I am drawing your attention to the meeting of May 3rd you had with Mr. St. Sure and Mr. Moore at which Mr. Gertz was present. Do you recall what was said there at that time by you, representing the union?

A. It was said to me there and was conveyed, I think, and was a general understand there if the fishermen could be gotten over and they would give the 1939 agreement to the rest of the unions the season would be on.

Q. 1939 San Francisco?

A. 1939 San Francisco—the season would be on.

(Testimony of Revels Cayton.)

By Mr. Madison:

Q. Said by whom? A. I said it.

Q. You made the statement to Mr. St. Sure that? What was that agreement?

A. Here is the statement. I said, "If you can get over the fishermen the rest of this whole thing can be adjusted mighty easily."

Q. And that is all that was said about what Mr. Resner is inquiring about?

A. That is right. [113]

By Mr. Resner:

Q. And what was meant by that statement?

Referee Roden: We can find that out ourselves.

By Mr. Resner:

Q. Mr. Cayton, I want to draw your attention to a letter of April 12th. A. Yes.

Q. That is a letter of April 12, 1940, signed by yourself and addressed to the Alaska Packers Association? A. That is right.

Q. On the subject of these negotiations?

A. Yes.

Mr. Resner: I want to offer that as Claimant's next in order, Mr. Referee.

(Received in evidence as Claimant's Exhibit No. 21.)

(Testimony of Revels Cayton.)

CLAIMANT'S EXHIBIT No. 21

San Francisco Bay Area District Council No. 2
Maritime Federation of Pacific
Room 502—593 Market St., San Francisco

April 12, 1940

Alaska Salmon Industry, Inc.
230 California Street
San Francisco, California

Gentlemen:

The District Council #2 of the Maritime Federation of the Pacific replies to your letter of April 11th which we received this morning.

We might state at the outset that the negotiations this year seem to be principely a matter of letter-writing and publicity in the press carried on by the Packers. This is a departure from previous practices and one which, as we see it, is not conducive to speedy settlement of our differences. We would much rather sit down around the table with the principals involved and their counsel, and mutually hammer out an agreement rather than merely deal with one who possesses little if any authority from his principals.

The differences presently existing between the Packers and unions are in the main minor ones. The problem involving the Machinists is a matter of adjustment of some wage disputes. For you

(Testimony of Revels Cayton.)

to magnify this difference into titanic proportions does not bespeak good faith on your part.

The above comment likewise applies to the American Communications Association. With respect to the differences between yourselves and the Alaska Cannery Workers, it is true that locally they, and with your consent and approval, withdrew from negotiations for the reason that the representatives of this union and your organization are jointly negotiating in Seattle.

As we stated in our letter of the 9th we are still ready, able and anxious to continue negotiations and if you will abolish your recalcitrant and arbitrary attitude and conduct negotiations as they have been in the past, agreements could be entered into right away.

It is the opinion of the committee that through your series of statements and maneuvers you are simply endeavoring to force through a contract by delivering ultimatum after ultimatum and any impass that apparently has been reached was not made or created by any of the unions involved.

The matter of the elimination of the $75.00 penalty clause to the Alaska Fishermen's Union is a matter of importance for them. This is a condition that they have enjoyed for many years. If as you stated in your letter you are willing to withdraw your demand that the $75.00 penalty clause be eliminated there is an indication here that you desire to negotiate. We suggest that you extend your

(Testimony of Revels Cayton.)

willingness to cooperate with the fishermen to the other unions.

At the start of these negotiations your attitude with respect to the working hours of the Marine Cooks & Ste· ·rds was unacceptable to that union. Your apparent attempt to make some encroachments upon the 8 hour day are not in harmony with the present attitude of employers the country over to a reasonable work day of 8 hours and overtime thereafter. This is a point that should have caused no difference at all.

With respect to the Alaska Cannery Workers Union being deprived of 35 days of work. This is an arbitrary position you have taken and one for which the industry as a whole should answer. This industry must provide employment for the maximum number of men and the sole consideration of the Packers should not be the payment of dividends. But if you do not presently intend to hire any cannery workers until May 22nd there is no logical reason why you should presently insist upon any agreement, memorandum or otherwise, with the cannery workers when with your express approval your own representatives are presently conducting negotiations in Seattle with this union for the purpose of entering into an agreement.

With respect to your charges of bad faith, we repeat what we have mentioned heretofore, namely, that negotiations cannot be satisfactorily carried on through a minister without a portfolio.

(Testimony of Revels Cayton.)

In conclusion may we again state that we do not wish to see any of the season lost in Alaska. We entreat you to revise your attitude towards these negotiations and to call a meeting of all unions involved at the earliest convenience with the principals involved as well as their counsel and we assure you that we will enter the meeting room with an open mind and with a sincere desire to conclude an agreement.

Very truly yours,

BAY ARE DISTRICT COUNCIL #2, MARITIME FEDERATION OF PACIFIC.

(Signed) REVELS CAYTON,
Secretary.

RC:gl
uopwa-34
c/c Alaska Packers Ass'n.
Alaska Salmon Company
Red Salmon Company

Mr. Resner: I think that is all.

A. Could I offer this one statement?

Q. Yes.

A. That is, when speaking for the unions in the capacity, Mr. Referee, of Council Secretary it is necessary that I speak guardedly, like I am meeting with the employers, you see. I don't have the authority to commit a union to do this or that,

(Testimony of Revels Cayton.)

you see. I act merely in the capacity of a coordinator; therefore, I could not come out and say to them and the reason I didn't, "If you settle up with the Fishermen the rest will go for 1939 agreements." If I did say that some of the other unions who had slight differences would put me on the spot for it. What I had to say was put diplomatically and in negotiating terms. Well, he knew what I was saying. I was saying, "Sure, these guys would go for it!"

RESPONDENT'S WITNESSES

PAUL ST. SURE,

Financial Center Building, Oakland, California, being duly sworn, testified as follows:

Direct Examination

By Mr. Madison:

Q. What is your name, please?

A. Paul St. Sure.

Q. And your address?

A. Financial Center Building, Oakland.

Q. Mr. St. Sure, will you state generally what the Alaska Salmon Industry, Inc., is?

A. Alaska Salmon Industry, Inc., is a corporation which was formed early in 1940. I had indirect knowledge of its formation, but I have seen the Articles of Incorporation and By-Laws and it was organized for the purpose of handling labor relations matters and labor negotiations for the Alaska

(Testimony of Paul St. Sure.)

Salmon industry on the [114] Pacific Coast, particularly, where operators are out of San Francisco, Astoria, Portland, and Seattle.

Q. What was your connection with them?

A. I was employed by the Alaska Salmon Industry early in March, 1940, to represent the three San Francisco Operators, that is, the Alaska Packers Association, the Alaska Salmon Company, and the Red Salmon Company, to handle negotiations in San Francisco, the principal office of the corporation being at Seattle. And, as a matter of convenience, such negotiations as would be handled in San Francisco would be handled by me: and Seattle Office was to handle the negotiations of the northwest.

Q. And Mr. Moore, who has been referred to in the testimony before, you would probably refer as whom?

A. He is an attorney associated with me in the practice of law.

Q. His full name is what?

A. Edward H. Moore.

Q. Now, Mr. St. Sure, in the capacity you have just described, you did conduct negotiations with the unions which led up to the final decision as to whether the Alaska undertaking would be taken this year or not, did you not?

A. That is correct.

Q. And what was the first step in connection with these negotiations?

(Testimony of Paul St. Sure.)

A. I believe, on the 6th of March, 1940, a letter was addressed to each of the unions with whom the San Francisco Packers, that is, the three companies I have mentioned, informing the unions that the Alaska Salmon Industry had an office at 230 California Street, San Francisco, and that negotiations for the 1940 season would be conducted by myself and Mr. Moore at that office requesting the unions to communicate with us for the purpose of arrangement of appointments for negotiation meetings.

Q. Have you a copy of that letter?

A. I don't seem to have a copy of that letter, but on the following day—pardon me, I do not have a copy of that letter.

Q. Go ahead.

A. Well, the following day a committee with Mr. Cayton.

Mr. Resner: You are referring to a letter of March 6th, Mr. Madison? I think that it is in evidence.

By Mr. Madison:

Q. Then the letter to which you have referred is the letter of March 6th, which is now in evidence?

A. I assume so, if that is the statement of Counsel. On the following day a committee of representatives of the unions affiliated with the [115] Maritime Federation of the Pacific, that is, District Council No. 2, with Mr. Cayton acting as Secretary and Coordinator, called at the office and advised Mr. Moore and myself that they were members of this Coordinating Committee and stated that they de-

(Testimony of Paul St. Sure.)

sired specifically to have something more by way of confirmation of our authority. They wanted a specific authorization from each of the San Francisco Packers indicating that Mr. Moore and I were authorized in the name of the Alaska Salmon Industry to negotiate 1940 contracts. They also informed us at that time that there were certain pending claims arising out of the 1939 operations which had not been settled and they desired us to be on notice there would be no negotiations conducted by any of the unions affiliated with the Maritime Federation of the Pacific until those claims had been paid. I believe that was the extent of the meeting for discussion generally we had on the 7th.

Q. I show you a document here purporting to be signed by Alaska Packers Association and Alaska Salmon Company and Red Salmon Company and I ask you if that is the document to which you refer? A. It is.

Referee Roden: We have that in evidence.

A. On the 8th of March there was a specific authorization sent to the unions signed by each of the canners in the form of documented evidence with that; or concurrently was sent a letter on the date of March 8th addressed to each of the unions, and also a copy to Mr. Cayton, Chairman of the Alaska Coordinating Committee, referring to the meeting on the 7th and to the authorization under date of March 8th, which was enclosed.

Mr. Madison: I would like to offer this letter in evidence.

(Testimony of Paul St. Sure.)

Mr. Resner: I think that is in, Mr. Madison.

Mr. Madison: May I suggest this thing, Mr. Examiner, we introduce this in evidence and where there appears to be duplications we eliminate them? That will save us from going back and checking them.

Referee Roden: Yes.

Mr. Madison: Then, subject to that suggestion, which has been approved by the Examiner, I offer this letter of March 8th in evidence and mark this as Canner's Exhibit No. 1, or A.

Referee Roden: Yes.

(Received in evidence as Respondent's Exhibit A.) [116]

CANNERS' EXHIBIT A

Registered Mail

Copy

September Thirtieth, 1939

Alaska Cannery Workers' Union,
32 Clay Street,
San Francisco, California.

Karluk and Chignik Operations—1940

Gentlemen:

You will recall that last Spring the claim was made by members of your organization that they were not fully informed, consequently were unaware that the Alaska Packers Association did not intend to operate Karluk and Chignik canneries in a similar manner as heretofore, and that the length

(Testimony of Paul St. Sure.)

of the season had been curtailed, with the result that your members had prepared themselves for a long season, and upon sailing of the first vessel for Karluk and Chignik, found that they were not to be transported to those locations until later.

In order to overcome working a hardship on your members the Alaska Packers Association agreed and did take them on the first expedition.

Please inform your members that, although they were employed for a longer season in 1939, it is the intention of our company to curtail operations at both Karluk and Chignik, also the length of the season. Therefore, your membership should assure themselves, early in the Spring of 1940, the extent of our operations at those plants and approximately the length of employment that we shall be able to offer them.

Yours truly,

ALASKA PACKERS ASSOCIATION,

A. K. TICHENOR

Vice President and General Manager.

AKT/FS

[Endorsed]: Filed May 7, 1943.

By Mr. Madison:

Q. Mr. St. Sure, going back a minute, there was a letter written on September 30, 1939, in re-

(Testimony of Paul St. Sure.)

gard to the curtailment of Central Alaska by the Alaska Packers Association. Have you that letter there?

A. I have a copy of that. I discussed with Mr. Tichenor and I believe it is a correct copy of which was sent by registered mail on that date.

Mr. Madison: I offer this letter as Canner's Exhibit B.

Referee Roden: Suppose we make this A? Then we will have it a little bit in chronological order? (Indicating)

Mr. Madison: Suppose we make this one A without renumbering that until we get back to it?

Q. Now, in November, 1939, the Alaska Packers Association notified the union the 1939 contract, including all memorandum contracts, terminated?

A. My understanding is several letters was sent to each of the unions with which contracts had been in effect during the 1939 season.

Mr. Madison: I believe that is in evidence, but I would like to mark it under the same understanding.

Mr. Resner: That is not in evidence.

Mr. Madison: Then, I will offer this in evidence and ask that it be marked B.

(Received in evidence as Respondent's Exhibit B.)

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT B

Registered Mail
Copy

November Second, 1939

United Cannery, Agricultural, Packing and Allied Workers of America, Alaska Cannery Workers' Union, Local No. 5, C.I.O.
32 Clay Street,
San Francisco, Calif.

Gentlemen:

This is to advise you that the undersigned, Alaska Packers Association, has elected, pursuant to the option given by section 37 of its agreement with you dated May 24, 1939, to terminate said agreement at the expiration of the 1939 season, as provided in such section 37.

This will confirm our understanding with you that the memorandum of agreement dated May 24, 1939, relating to the employment of tallymen, tally-captains, cannery clerks and other clerical employees, and the memorandum of agreement dated April 22, 1939, relating to the employment of cannery workers at Chignik and Karluk, were part of the principal agreement dated May 24, 1939, and are like-

(Testimony of Paul St. Sure.)

wise terminated at the expiration of the 1939 season in accordance with this notice.

Yours very truly,

ALASKA PACKERS ASSOCIATION,

Vice President and General Manager.

EAM/FS

Mr. Resner: That is of November 2nd?

Referee Roden: Yes.

By Mr. Madison:

Q. Now, on November 8th the union acknowledged receipt of the notice and requested early negotiations for the 1940 contract.

A. I have a copy of a letter dated the 8th of November, which is a true copy of the original, received from the Alaska Cannery Workers Union.

Mr. Madison: I will ask this be introduced and marked Exhibit C.

Referee Roden: November 8, 1939 (Indicating).

(Received in evidence as Respondent's Exhibit C.)

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT C

Copy

Alaska Cannerey Workers Union
Local No. 5, C.I.O.
32 Clay Street,
San Francisco

November 8, 1939

Alaska Packers Association,
111 California Street,
San Francisco, California.

Attention: Mr. A. K. Tichenor

Gentlemen:

This letter will acknowledge receipt of your letter of the 2nd, in which you advise us of your desire to terminate our contract dated May 24th, 1939.

We wish to advise you, that on behalf of all of the members of our Union, for which said members we have been certified as the collective bargaining agent by the National Labor Relations Board, that we desire to immediately enter into negotiations with you for the 1940 salmon season.

Please be advised, therefore, that at your earliest convenience, we should be pleased to have our Negotiating Committee meet with your representatives in order to agree upon the working conditions and wages of the workers within our jurisdiction who

(Testimony of Paul St. Sure.)

will perform services for you in Alaska during the coming season.

Yours very truly,

GEORGE WOOLF,

President Alaska Cannery Workers Union #5

GW:D

Registered Return Receipt Requested

Uopwa-34

By Mr. Madison:

Q. Now, on January 17, 1940, the union notified the three San Francisco Packers that it claimed jurisdiction over nurses, first aid men, embalmers, orderlies, and watchmen—was going to act as their agent. Did you receive that communication? [117]

A. Here is a copy of the letter, dated January 17th, addressed to each of the three canners.

Mr. Madison: I will offer this in evidence and ask that it be marked Exhibit D.

(Received in evidence as Respondent's Exhibit D.)

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT No. D

Copy

Alaska Cannery Workers Union
Local No. 5 C.I.O.
32 Clay Street,
San Francisco

January 17, 1940

Alaska Packers Association,
111 California Street

Alaska Salmon Company,
525 Market Street,

Red Salmon Canning Company,
64 Pine Street

Gentlemen:

This is to advise you that for the 1940 salmon season in Alaska we have, and pursuant to our certification by the National Labor Relations Board, we claim jurisdiction over the classifications usually referred to as nurses, first-aid men, embalmers, orderlies and watchmen.

During our negotiations for the coming season we shall act as the bargaining agent for these classifications for the purpose of having these classifications included in our general contract.

Please be advised that more than a majority of

(Testimony of Paul St. Sure.)

people working in the above classifications have made application to our union for membership.

Yours very truly,

GEORGE WOOLF,

President, Alaska Cannery Workers Union #5

GW:D

Registered Letter

uopwa-34

Now, Mr. Examiner, I think this other exhibit should properly be marked Exhibit E.

(Indicating) That is the letter dated March 8th.

(Received in evidence as Respondent's Exhibit E.)

Q. Now, Mr. St. Sure, would you proceed and advise as to the next meeting with the union, or the next communication sent to the union by you in your negotiations with the union?

A. My recollection is either on the 7th or 8th of March there had been made an appointment to meet with the negotiating committee of the Alaska Cannery Workers Union for March 12th at two o'clock. And, I believe, on the 8th of March we received a telephone call from some representative of the Cannery Workers Union cancelling the meeting on the ground that the union was not going to negotiate in connection with any matters until all wage claims for the 1939 season had been settled as to all unions affiliated with the Maritime Federa-

(Testimony of Paul St. Sure.)

tion. And on the 9th of March we received a communication signed by Mr. Sam Young, Secretary of the Cannery Workers Union, Local No. 5, confirming the cancellation of that meeting.

Mr. Madison: I ask this letter be introduced and marked Exhibit F.

(Received in evidence as Respondent's Exhibit F.)

RESPONDENT'S EXHIBIT No. F

Alaska Cannery Workers Union
Local No. 5, C.I.O.

Affiliated to
United Cannery, Agricultural Packing &
Allied Workers of America
Committee for Industrial Organization
Maritime Federation of the Pacific
San Francisco District Industrial Union Council
International Labor Defense of the United States

George Woolf, President
Karl G. Yoneda, Vice-President
Raymond Aguirre, Secretary
32 Clay Street
San Francisco
Phone EXbrook 4871

March 9, 1940

Alaska Salmon Industry, Inc.
230 California Street
San Francisco, California
Att'n: Mr. Paul St. Sure

(Testimony of Paul St. Sure.)

Gentlemen:

Confirming our telephone conversation of yesterday, please be advised that the Negotiating Committee representing this Union has been instructed to cancel its appointment to meet with your Committee Tuesday, March 12th, 2:00 p. m., until such a time as the matter of the wage claims for the 1939 season have been settled.

Yours very truly,

[Seal] SAM YOUNG

Secretary Alaska Cannery Workers Union #5

RD

uopwa-34

Q. What happened then?

A. About the 27th of March we had a meeting with the Negotiating Committee for the Cannery Workers Union. They stated that they desired to present a contract for the 1940 season and discuss it—with the understanding, still, however, there would be no agreement reached and no actual negotiations until the claims had been settled for 1939, those being still unsettled at that time. And being then in the process of direct negotiation with the operators and not to the Office of Alaska Salmon Industry, Incorporated, they presented an agreement, a copy of which I hand you. (Indicating) I may state I believe that is a copy given us and not a copy of it.

(Testimony of Paul St. Sure.)

Mr. Madison: I offer this in evidence and ask that it be marked Exhibit G [118]

(Received in evidence as Respondent's Exhibit G.)

RESPONDENT'S EXHIBIT G.

Agreement Between United Cannery, Agricultural Packing & Allied Workers of America, CIO, and the Alaska Salmon Industry, Inc., and Other Canned Salmon Operators

— 1940 —

This agreement, made and entered into between ....., a Corporation, for its .....Cannery, the party of the first part hereinafter referred to as the Company, and the United Cannery, Agricultural, Packing & Allied Workers of America, CIO, in behalf of ..... Local No. ....., the party of the second part, and each and severally it is agreed:

Marginal Notation—O K.

Witnesseth

Section 1. (a) The Company agrees to recognize the Union as the exclusive and sole bargaining agent of all its employees engaged for Alaska salmon operations from the State of California, Oregon, and Washington, for the 1940 season in the capacities herein listed.

Cannery Workers and Other Classifications

First foreman

Second foreman

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(Tally-Captains
(Tallymen

Marginal Notation—Query see ACA contract 1939.

Storekeepers
Timekeeper
Cannery Clerk
Watchman
(Nurse
(Nurse and Embalmer
(First-aid men
(Orderly

Marginal Notation—New over 1939

Chief steward
Butcher (if used)
First cooks
Second cooks
First bakers
Second bakers
Night cooks
Cooks helper or kitchen helper
Vegetable men
Pot washer
Dish washer
Waiter

Marginal Notation—Balance is same.

Delegate
Head of Department (if used)
Relief men

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

Iron chink men
Hand butcher and slimers
Can tester (hot)
Can tester (cold)
Solderer
Jitney driver in cannery
Truck driver (if used)

Class "A"
Scow men
Fish sorter
Bin man
Pew fish
Fish inspector
Conveyor man
Fish chopper
Filler feeder
Elevator man
Cooler loaders (can catch)
Salt men (4 or more lines)
Fish cutters
Supplying cooler to line
Cooler trucker
Hoister man
Retort man
Can washer
Brush washer
Can piler
Case piling (full)
Stitching and wiring
Box making

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

Class "A"—(Continued)

Casing machine feeders & catchers
Hand labeling
Tin slitter and cutter
Can end and body supplier (4 to 5 lines)

Class "B"

Transfer men
Patching table
Clincher
Can end and body suppliers (1 to 3 lines)
Salt man (1 to 3 lines)
Shooting empty cans
Janitors
Empty can tester
Reform feeder
Can shop trucker
Watchman on line
Empty box piler

(b) The Company shall procure all employees who come under our jurisdiction from the headquarters of the Union's hiring halls for its Alaska cannery operations from the ports where the salmon Companies have headquarters.

Marginal Notation—Old.

(c) The Company agrees to recognize the Union as the exclusive and sole bargaining agent for its employees engaged in the cannery operations, hired in the Territory of Alaska for the 1940 season in

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

the capacities listed below, in sub-section (g) 1, 2, 3, 4, and 5.

Marginal Notation—Old.

(d) The Company shall procure all resident employees who come under the jurisdiction of the Union from the Union's headquarters or the Union's hiring halls in such areas where such headquarters or hiring halls are established. The Union shall furnish the Company with workers in the numbers and classifications agreed upon, and workers for each Company shall have preference of re-employment in the same Company.

Marginal Notation—Old.

(e) If additional workers are needed above the 1939 employees, in Alaska, such workers shall be furnished from the waiting lists of the Union for each particular cannery. If the Union has no waiting lists for such particular cannery the Company may hire from any available source, providing such employees shall become members of the Union or shall have received a permit from the Union within a period of time specified by the Union.

Marginal Notation—Old.

(f) Resident workers hired and working at a monthly or seasonal rate shall be classified in the same manner as non-resident cannery workers as specified in Section 1 (a).

Marginal Notation—Old.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(g) The following classifications of work shall apply to resident cannery workers hired and working on an hourly rate of wages.

1. Hand pewing. (Where no elevators are installed in boats.)

2. Class "A"—Headers and feeders, iron chink men, unloading by sluicers or elevators from boats, fish sorters and relief men.

3. Class "B"—Delivering fish to iron chink elevators, sluicers, can catchers, slimers, filler feeders, men in can loft and warehouse and on general can work, including lye wash and retorts; experienced full time stitchers, where used; full time regular box piler, hand packers, and relief men.

4. Class "C"—Patching table, vacuum machine and topper.

5. Class "D"—Feeding reformers and all other women in can loft and warehouse.

Marginal Notation—Old.

(h) In the event any classification is not specified or is known by other names, or new classifications are to be added of employees coming under our jurisdiction, wages, and benefits and the definite classifications shall be agreed upon and made part of this agreement and retroactive from date of embarkation.

Marginal Notation—Same.

Section 2. The Union in all cases shall be the judge and determine the qualifications of its members.

Marginal Notation—Same.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

Section 3. The Union shall at the request of the Company furnish men for the respective canneries as are agreed, required, and indicated in the supplemental rider under the caption "Personnel". The Company shall make formal request for cannery crews at least fifteen (15) days prior to tentative departure for Alaska.

Marginal Notation—Same.

Section 4. (a) The Union claims jurisdiction, whether in plants or floating canneries, of the canning, processing, handling of the fish from the time the fish is run on the conveyors, to the fish bins and the several operations through which it passes until the finished product is canned, labelled, and packed either in cartons or cases, and delivered to the warehouses, vessles, and etc., including the making of cans, boxes and cartons, operating and feeding of the following machines, but not the upkeep or maintenance: Iron chink (gang knives, butchers, or cutters); filling machine feeders and helpers; clincher machines; stitching machines; and all other work that can body machines; pasting machines; can casing machines stitching machines; and all other work that has customarily been done heretofore, and not in conflict or encroaching on the jurisdictional rights of other Unions. Also, the processing, filleting, reducing, and the manufacturing of any of its by-products.

Marginal Notation—Same?

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(b) Jurisdiction and work claim of tally-captains, tally-men, cannery clerks and storekeepers, and cannery timekeepers, includes checking and/or issuing merchandise and supplies on and off vessels, floating canneries, shore plants, tallying and recording and responsibility of issuing receipts for fish delivered to a tally station.

Timekeeping and other clerical work, except work customarily done by yearly and steady employees, and clerical work coming within the scope of the radio personnel.

Any of the above mentioned classifications may be used alternately or in combination by mutual agreement, and men may do other work providing said work does not encroach on the jurisdiction of other unions, but expressly excludes routine cannery work and any and all work within the scope of the radio personnel. Auto or truck drivers may be used as outlined above as applying to tallymen, etc.

Only members of this Union shall be hired as watchmen, whose duties shall consist solely of watching quarters, warehouses, etc., on vessels, floating canneries, and shore plants, from the day of leaving until return.

Marginal Notation—Same?

Section 5. No person not a member or permitperson of the Union shall be allowed to perform

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

any work coming under the jurisdiction of the Union.

Marginal Notation—Same.

Section 6. The Company shall supply, for the purpose of employees putting up salt or smoked salmon for their private use, suitable quarters with running water, means of disposing of offal, and a smoke and storage house. Employees shall be permitted to bring back smoked and salt salmon without charge.

Marginal Notation—New.

Section 7. No employee shall be required to work or pass through a picket line established by organized labor, or to work where armed guards are employed during a labor dispute. A refusal to do so shall not be considered a violation of this agreement.

Marginal Notation—Same.

Section 8. The Company shall not discriminate against any employee for Union activities, race, color, or creed, or for lawsuits instituted because of dispute of contract.

Marginal Notation—Same.

Section 9. A list of all merchandise, with prices, intended for sale to members or residents on vessels, en route, or in Alaska, shall be submitted for Union consideration at least fifteen (15) days before sailing, and mutually agreed upon by the Union and the Company, and maintained at a standard and uni-

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

form price. When procurable, merchandise shall be obtained from fair concerns, and bear the Union label.

Marginal Notation—New.

Section 10. (a) The Union claims certain definite rights and benefits in behalf of its membership as outlined in this agreement, and these rights shall be upheld by the authorized Delegate, who shall act as a representative and spokesman of the Union, and in the event of a dispute or a misunderstanding, they will be vested with the authority to settle to the best of their ability all issues that may be brought to their attention. Further, Delegates are authorized and instructed that strict observance of all rules and regulations, hours, wages, and general conditions are observed. They shall endeavor at all times to settle all matters and issues in a satisfactory manner to all concerned.

Marginal Notation—Same.

(b) Delegates shall be recognized as Business Agents in the cannery, and is to devote his full time to and for this purpose.

Marginal Notation—Reworded.

(c) Any controversial disputes that cannot be settled at the cannery are to be adjusted and settled after the season at the port of embarkation of the expedition. Under no circumstances will Superintendents or agents of the Company be compelled to sign any disputed wage claims. However, in the

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

event of a controversial dispute which is not settled between our Delegates and the Company agents, the matter may be referred to the Co-Ordinating Committee representing all Unions, or to the entire membership of working Unions of the expedition, but in the event of an obvious and apparent wilful violation of this agreement the Union reserves the right to strike, create a stoppage of work, or a refusal to work.

Marginal Notation—Clarification.

(d) However, in the event a verbal and mutual agreement or settlement is entered into, and not in conflict with any clause, section, or article of this agreement, it shall be reduced to writing and become valid and binding, and shall state that no co-ercion or intimidation was used in effecting a settlement.

Marginal Notation—Clarification.

Section 11. It is expressly agreed that neither the Company or its agents, nor the Union or its representatives, have the power or authority to change any of the provisions of this agreement.

Marginal Notation—Same.

Section 12. The Company shall recognize in each cannery and/or in each vessel a Co-Ordinating Committee which shall be set up by each organization delegating a member as Shop Steward and/or Union Delegate to sit on this Committee.

Marginal Notation—Same.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

Section 13. (a) The parties hereto (excepting residents of Alaska) hereby waive the provisions of Chapter 45 of the Session Laws of the Territory of Alaska for the year 1925, and all amendments thereof, and acts supplemental thereto, and agree that the payment of wages and other compensations referred to in this agreement, shall be in accordance with the provisions of this agreement and without regard of said Act.

Marginal Notation—Same.

(b) The parties hereto waive the provisions of Section 124 of the Compiled Laws of Alaska, 1933, and agree that the payment of wages and other compensation referred to in this agreement shall be made promptly at the close of the period of employment and shall be accompanied with an itemized statement of each employee's earnings and deductions, provided, however, each resident employee hired under this agreement shall be entitled to at least one draw day each week when the same is requested by such employee.

Marginal Notation—Reworded.

(c) The Company shall pay directly to all employees all earnings due within forty-eight (48) hours after arrival in home port, holidays and Sundays excepted. Failure on the part of the Company to meet this requirement shall constitute a just claim by the employee to an additional pro-rata

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

monthly or seasonal wage rate for each day of delay, plus subsistence at $3.00 per day.

Marginal Notation—Same.

Section 14. School, Poll, Social Security and other taxes, assessed against employees, authorized by any Federal, State, or Territorial laws, shall be deducted by the Company from wages due. The Company shall withhold any payments required to do so by writ of garnishment or other legal proceedings or by assignments. Before acceptance the Company shall verify with the individual employee or employees.

Marginal Notation—Same.

Section 15. Allotments and Advances. (a) During the course of the season employees with families or dependents upon them shall receive the following allotments:

Foremen	$ 75.00 per nionth
Chief Stewards	75.00 " "
Cooks and Bakers	75.00 " "
Other kitchen help	50.00 " "
Cannery workers	50.00 " "
Tallymen, etc.	50.00 " "
Nurses, etc.	50.00 " "

Marginal Notation—Prac. same.

(b) Allotments shall be made by assignments by the individual employees in accordance with Section 15 and shall be paid within seven (7) days after sailing to Alaska and every thirty (30) days thereafter.

Marginal Notation—Same.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(c) Employees shall be given an advance of five dollars ($5.00) upon signing the payroll.

Marginal Notation—Same.

(d) It is agreed and provided that the sum of ten dollars ($10.00) shall be made avialable to each employee one (1) day before arrival in the home port.

Marginal Notation—Same.

Section 16. Employees whose work is such that it has been the custom to necessitate the use of suitable oil-skins, apron, knee, hip or sea-boots, sleeve guards, or gloves, southwesters, kapok life jackets, flashlights, rubber overshoes, rubber gloves, oilskin hats, and heavy leather gloves furnished to lye-wash and retort men, shall be supplied free of charge.

Marginal Notation—Reworded.

Section 17. No employee shall be required to work where hazardous or unsafe conditions exist.

Section 18. (a) Transportation, subsistence, laundering, hospitalization, medical, surgical and dental attention shall be furnished to all employees from the point of embarkation to canneries and return to point of origin at the Company's expense. Residents of Alaska shall be transported from point of hiring and return at the Company's expense. Where men are transported on lighters, same shall be equipped with tarpaulins, toilets, and drinking water. The safety and comfort of employees shall be ob-

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

served above all; and shall be the first consideration.

Marginal Notation—Reworded.

(b) From vessels in anchorage in Alaska to canneries, and vice-versa, men shall be transported between the hours of 8:00 a.m. and 5:00 p.m. Any other hours of transporting men shall be paid at the overtime rate, as the case may be.

Marginal Notation—New.

(c) If a nurse is required to go to the ship or place away from the Company's office for the purpose of helping the Doctor with vaccinations, examinations, etc., the Company shall furnish said nurse with transportation and pay to and from the office or place of the Company.

Marginal Notation—New.

Section 19. Definition of Various Phases of Work. For the purpose of clarifying and eliminating misinterpretation or misapplication of the various phases of work in or around either floating or land plant canneries, it is agreed that the following definitions of work will be recognized:

(a) Routine Cannery Work. Includes all work performed as outlined in Section 1 (a). Refer to Jurisdiction, Section 4 (a).

Marginal Notation—Same.

(b) Stevedore Work. All work involving the handling of any kind of cargo, moving to a dock or to a vessel and/or floating structure from a point of rest on the dock or in the warehouse, or vice-

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

versa, including preparatory work, breaking piles, shall be considered stevedore work. It should be distinctly understood that cargo as referred to above, moved from dock to warehouse, and eventually moved again, whether handled one or more times, or vice-versa, shall be considered stevedore work and paid at the wage agreed herein.

Marginal Notation—Same.

(c) Experimental Work. Shall be construed to mean work in connection with research or other technological operation not covered under routine operation in the handling or processing of sea-foods, or its by-products. Refer to Section 4.

Marginal Notation—Clarified 4.

(d) Miscellaneous Work. Shall be all work other than those classified as routine, stevedore, or experimental work.

Marginal Notation—Same.

(e) Tallymen, etc. For the purposes of this agreement, when the words tallymen, etc., appear in this agreement, it shall mean tally captains, tallymen, cannery clerks and/or cannery storekeepers, cannery timekeepers, and miscellaneous clerical work that may be added.

(f) Nurses, etc. For the purpose of this agreement, where the words nurses, etc., appear in the agreement, it shall mean nurses, combination nurses and embalmers, first-aid men and orderlies.

Marginal Notation—New.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(g) Any time the word employee is used in this agreement it will mean either a resident or a non-resident member, or a permit person.

Section 20. Recreation, Radio, and Press News, (a) The Company agrees to subscribe for and furnish a daily radio news service for employees in Alaska. Such radio news shall contain uncensored labor news items, and copies of same shall be posted daily at all canneries, bunkhouses, and in a conspicuous place aboard all ships, tugs, scows, etc., and in any location manned by members of any Union covered by a Contract with the Company.

Marginal Notation—Same.

(b) A recreation hall for the use of the employees shall be made available and shall contain a radio, and/or a suitable phonograph with up-to-date records of Spanish and English selections, and in sufficient numbers to be determined upon, and sufficient needles, also reading and writing tables, suitable number of benches and book-shelves.

Marginal Notation—Clarified.

Section 21. Medical and Hospital. (a) The Company shall furnish up-to-date hospitals, and/or first-aid stations, and dispensaries. Vessels and cannery plants shall be equipped with Stokes Stretchers, first-aid kits and such other equipment and supplies as are agreed upon and required.

Marginal Notation—Same.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(b) All physicians and surgeons employed by the Companies operating canneries in Alaska shall be required to hold a license to practice medicine from the State from which he embarks, and shall have been engaged in interne-ship, residency medicine, or the private practice of medicine within ninety (90) days prior to his employment by the Company.

Marginal Notation—Changed.

(c) Established headquarters shall be open twenty-four (24) hours each and every day, Sundays and Holidays included, with the Doctor subject to call. In the event dental or Doctor's attention is required, and cannot be furnished in a plant, transportation by air or otherwise shall be immediately provided. The Co-Ordinating Committee shall determine, if necessary, when transportation is required.

Marginal Notation—New.

(d) Doctors or others shall not be allowed to perform any work coming under the scope of nursing.

Marginal Notation—New.

(e) Nurses, first-aid men, embalmers, orderlies, etc., shall do no work outside the scope of nursing and the care of the sick and injured.

Marginal Notation—New.

(f) The hospital in plant or on the vessel shall be used for sick and injury cases only, and shall

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

not be used as a hotel, but in case of an emergency, the nurse shall be paid in addition to his regular salary the sum of $1.00 per guest per day.

Marginal Notation—New.

(g) The Company shall furnish the nurse with a list of each and every member employed by the Company within twenty-four (24) hours after arrival in the Cannery, setting forth name, rank, Company number, etc.

Marginal Notation—New.

(h) Dental service shall consist of at least painless extractions and the treatment of infections resulting from said extractions.

Marginal Notation—Same.

(i) Before embarking, excepting residents of Alaska, all employees shall submit to a physical examination by a qualified physician, including those members requiring special certificates as food handlers, etc., and no costs in connection with the examination and certificates shall be borne by the Union or its members.

Marginal Notation—Same.

(j) Where employees are required to submit to a physical examination, same shall be done in a dignified manner, with regard to the method used, and the Union reserves the right to furnish doctors for the purpose of re-examination where physical rejection has been made. In such case, and in the

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

event that member is eventually passed, Company shall be held responsible for the examination fee.

Marginal Notation—Same.

(k) In the event of a transfer of an employee patient physically unfit for further performance of his work and his condition is such that nursing care is necessary during his transfer, the Company shall furnish adequate nursing care until the patient arrives at his destination.

Marginal Notation—New.

(l) Any employee covered by this agreement who sustains an injury in the course of his employment and is thereby prevented from working shall receive his full wages during the period of such injury and until the end of the season and his discharge to port of embarkation. From and after the end of the season he is to receive compensation in accordance with the Workmen's Compensation laws for the Territory of Alaska, or the State from which he embarks, at his option, or in event injuries occur at sea while performing duties aboard any vessels he may seek redress under the act of Congress usually referred to as the Jones Act.

Marginal Notation—Clarification.

(m) Any employee, from the time of embarkation until his return, who is unable to perform his duties as a result of any illness manifesting itself between said periods, shall receive his full compensation for the season, and in event said injury is

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

industrial in nature, shall have redress under said Workmen's Compensation laws.

Marginial Notation—Clarification.

Section 22. (a) In the event of death of any member for any cause—accidental, natural, or industrial—while in the employ of the Company, all costs of transportation, embalming, and the furnishing of a metal casket for the transporting of remains shall be at the expense of the Company, and interment shall be at the direction of the Union, except that the Company shall not be responsible for additional costs of transportation to points other than that of original embarkation. In the event of a burial in Alaska, or at sea, interment shall be in keeping with the recognized standards. It is further provided, in the event of death of any member, accidental, natural, or industrial, while in the employ of the Company, that the deceased's beneficiary shall be paid the equivalent of a full season's compensation.

Marginal Notation—Reworded.

(b) When a member dies and a wire is sent the family through the Union for instruction as to disposal of body, and embalming is required pending receipt of information, same shall be done.

Marginal Notation—New.

Section 23. Fire Department. (a) Adequate fire stations and sufficient mobile fire equipment shall be provided by the Company at all canneries.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

Two crews (day and night) consisting of no less than eight (8) men, shall be designated and instructed in the use of mobile equipment. Fire drills shall be held not less than twice monthly, on Company time, during the second period of any designated shift; the time to be set jointly by the Co-Ordinating Committee and the Company Agent.

Marginal Notation—Same.

(b) A uniform standard code signal shall be established.

Marginal Notation—Clarified.

Section 24. Linen and Laundry. (a) The Company shall furnish all employees covered by this agreement with soap and matches, a bed, spring, mattress, pillow, and two (2) good blankets, pillow slips, two (2) white sheets, and spread; to be changed every seven (7) days; face and bath towels to be furnished twice a week; the day of change to be agreed upon between the Chief Steward and Delegate.

Marginal Notation—New.

(b) When linen change is not provided, the Delegate shall notify the Chief Steward to this effect, and if no change is made on the following day, a penalty of One Dollar ($1.00) per day per employee will be charged.

Marginal Notation—Part new.

(c) The Company agrees to furnish at their ex-

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

pense to all employees covered by this agreement laundry service once a week of washing, drying, and ironing, of Nurses' and Culinary Workers' uniforms.

Marginal Notation—New.

Section 25. Sanitation. (a) Janitors in canneries and vessels shall be supplied by the Chief Steward with foot wash solution, lye, deodorants, toilet paper, mops and brooms, and face soap when required for employees.

Marginal Notation—Reworded.

(b) On vessels, floating canneries, or shore plants, janitors will only be required to take care of sleeping quarters, toilets, and showers used by the cannery crews.

Marginal Notation—Reworded.

(c) The Rules and Regulations of the Territorial Department of Health covering sanitation for canneries shall be strictly adhered to and observed.

Marginal Notation—Reworded.

(d) Upon arrival in Alaska and before leaving, employees shall be given one day to wash clothes and bathe.

Marginal Notation—New.

Section 26. Dormitories and Sleeping Quarters. (a) The Company shall furnish suitable quarters, screen doors and tight windows, with heat, light, ventilation, running water, toilet and showers in

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

connecti n, and necessary furniture, for all employees covered by this agreement.

(b) Tallymen, etc., shall not be required to sleep more than two (2) to a room.

Marginal Notation—New.

(c) Nurses, etc., shall have separate quarters, either in hospital, or adjacent, and have separate rooms.

Marginal Notation—New.

(d) Kitchen crews shall have sleeping quarters apart from kitchen and away from other quarters in order to assure restful sleep without disturbance, and not more than two (2) men shall be assigned to a room.

Marginal Notation—Reworded.

Section 27. Meals. (a) There shall be no distinction between hot or cold lunches or meals.

Marginal Notation—New.

(b) Meals shall be served at the following times, en route and in canneries: Breakfast at 7:00 a.m., lunch at 12:00 noon, and dinner at 5:00 p.m., and every five (5) hours thereafter from the commencement of said meals, except in cases of breakdown of ranges or other causes where the Company may not be at fault.

Marginal Notation—Same.?

If men are worked more than five (5) hours without a meal, they shall be paid a penalty of time

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

and one-half of the prevailing rate as the case may be.

Marginal Notation—Clarified.

(c) Sufficient food of a diversified character shall be furnished by the Company, and wholesome meals of good quality and sufficient quantity shall be available at all meals.

Marginal Notation—Same.

(d) All meals shall be served in American style and standard, but this does not preclude the use of foreign foods.

Marginal Notation—Same.

(e) All meals shall be served in crockery-ware, whether on vessels or in canneries, and satisfactory table-gear must be provided.

Marginal Notation—Same.

(f) While vessels are enroute, breakfast, lunch and dinner shall be served, and 9:00 p.m., coffee and cold cuts shall be served.

Marginal Notation—New.

(g) In canneries, ten (10) minutes shall be allowed for coffee and pastry at 10:00 a.m., 3:00 p.m., and 8:00 p.m.

Marginal Notation—New.

(h) Failure on the part of the Company for any cause whatsoever to furnish food in a sufficient quantity, including meat in enough quantities and

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

variety to provide two (2) different kinds of meat for noon and supper meals, shall subject the Company to a penalty of $1.00 per member per day until sufficient food is furnished.

Marginal Notation—New.

(i) While working or travelling enroute on vessels, transported on lighters or by train, bus, or other means, employees shall be fed with a hot meal every five (5) hours, and if not, the Companies shall pay a penalty of time and one-half of the prevailing rate, as the case may be.

Marginal Notation—New.

(j) The Company shall furnish the Union a list of food and provisions fifteen (15) days prior to sailing.

(k) No less than sixty (60) minutes shall be taken for any meals.

Marginal Notation—Reworded new.

(l) When employees are required to cook their own meals they shall be paid one dollar ($1.00) per meal in addition to their regular compensation.

Marginal Notation—New.

Section 28. Hours. (a) Cannery Workers. Eight (8) hours or less between the hours of 8:00 a.m. and 5:00 p.m., shall constitute a day's work for the entire season from the time of leaving until return, for cannery workers.

Marginal Notation—Clarified.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G--(Continued)

(b) Forty-eight (48) hours, or less, shall constitute a week's work for cannery workers, between Monday and Saturday, and if the forty-eight (48) hours have not been worked, they shall not be required to make same up in any succeeding week.

(c) Kitchen Personnel. Eight (8) hours within a spread of twelve (12) hours between the hours of 6:00 a.m. and 6:00 p.m. shall constitute a day's work for all members of the kitchen crew on the day shift. Night men shall work a straight shift from 10:00 p.m. to 6:00 a.m.

Any work performed in excess of eight (8) hours, within the spread, or any work performed before 6:00 a.m. or after 6:00 p.m., or after 12:00 noon on Saturdays shall be paid for at the overtime rate.

Marginal Notation—Changed.

(d) Tallymen, etc. The working day before and after the fishing season shall be from 8:00 a.m. to 5:00 p.m. All work performed outside the period shall be considered overtime and paid at the overtime rate.

During the actual canning season, tallymen, etc., with the exception of watchmen, shall work at all times without overtime.

Marginal Notation—Same.

(e) Watchmen. Eight (8) hours shall constitute a day's work; from 8:00 a.m. to 4:00 p.m., from 4:00 p.m. to 12:00 midnight; from 12:00 midnight to 8:00 a.m.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

Forty-eight (48) hours shall constitute a week's work, from Monday, 8:00 a.m. to Saturday 4:00 p.m. Sundays and Holidays shall be paid at the overtime rate for the three shifts.

Marginal Notation—Same.

(f) Nurses, etc. Nurses, first-aid men, orderlies, etc., shall work an eight (8) hour shift. First shift from 6:30 a.m. to 2:30 p.m. Second shift from 2:30 p.m. to 10:30 p.m. Third shift from 10:30 to 6:30 a.m.

Six (6) days, from Monday to Saturday, shall constitute a week's work. Sundays and Holidays shall be paid at the overtime rate for the three shifts.

Marginal Notation—New.

(g) Resident Hourly Workers. For hourly resident workers three (3) hours minimum shall be paid for each call to work whether work lasts that long or not. Resident employees, who upon reporting after being called to work are forced to stand-by for lack of material, breakdown, or any other reason for which they themselves are not responsible, shall be paid for such stand-by time at the prescribed hourly wage for each classification unless the Company declares a recess of at least four (4) hours.

Marginal Notation—New.

(h) When the cannery operates during the canning season, resident workers regularly employed and assigned to positions on the line at the be-

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

ginning of the season shall have the opportunity to work as many hours as the lines operate and resident workers regularly employed and assigned to positions with the warehouse crew shall have the opportunity to work as many hours as the warehouse will operate. In the event that all lines are not operated, workers regularly employed and assigned to positions on the lines shall be rotated on a line basis. The intent and purpose of this paragraph is to guarantee the resident workers all of the work available at the cannery in the position to which they have been assigned.

Marginal Notation—New.

(i) The hour of twelve midnight (12:00 m.) shall be the basis for the computation of the payroll. On days of arrival, embarkation, or signing Company payroll a full day shall be paid irrespective of exact time.

Marginal Notation—Same clarified.

(j) One nurse shall be employed at least fourteen (14) days before departure of the ship, whose duty shall be to take inventory and stock of medicine and supplies of the ship. He shall pass upon all medical and hospital supplies for the cannery and ship shall not be allowed to depart without the OK of said nurse and the Union.

Marginal Notation—New.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(k) Pay for all employees shall start from date of embarkation, or signing of Company's payroll.

Marginal Notation—Clarified.

Section 29. Wages. (a) The following rate of compensation shall apply to the respective classifications of employment.

Marginal Notation—New.

1. Cannery Workers.

(a) All cannery workers employed in canneries normally operating three months or less, shall receive a two months' guarantee of wages in the amount of $300.00, in accordance with Section 30 (a) and (b), plus the additional compensation for the following employees as outlined below:

Marginal Notation—Clarified.

1. Delegates shall be paid $60.00 per month.
2. Butchers, iron-chink men, hand-butchers, jitney-drivers, relief-men....$50.00 per month department heads, solderers, & slimers.
3. Employees designated in Class "A"..$40.00 per month

Marginal Notation—New.

(b) All cannery workers employed in canneries normally operating three (3) months or more shall receive a three (3) months' guarantee of wages in the amount of $450.00, in accordance with Section 30 (a) and (b), plus the additional compensation for the following employees as outlined below:

Marginal Notation—Clarification.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

1. Delegates shall be paid $60.00 per month.
2. Butchers, iron-shink men, hand-butchers, jitney-drivers, relief-men, department heads, solderers and slimers ..... $50.00 per month
3. Employees designated in Class "A" $40.00 per month

Marginal Notation—New.

(c) In the event the season is extended longer, the wages shall be paid on a daily pro-rata basis.

2. Resident Cannery Workers.

(a) Resident cannery workers hired at a monthly or seasonal rate shall work under the same classifications and receive the same rate of pay as specified for non-resident workers in Section 29 (a)-1 above above, with the following additions:

Marginal Notation—New.

(b) Where board and room is not furnished, $30.00 per month shall be added.

(c) All resident monthly workers shall receive in addition to above rates the equivalent of transportation charges to Alaska and return paid for transporting non-resident workers to Alaska.

(d) Residents hired at an hourly rate shall receive the following minimum rates under this agreement:

1. Hand pewing (where no elevator is installed in boats) ..... $1.05 per hour
2. Class "A" ..... .90 " "
3. Class "B" ..... .85 " "
4. Class "C" ..... .80 " "
5. Class "D" ..... .75 " "

Marginal Notation—New.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

3. Foremen

(a) The following shall be the wages paid to foremen per season. The season shall not exceed ninety (90) days, and if exceeded, shall be paid additional on a pro-rata basis.

	First Foreman	Second Foreman
1 and 2 lines	$	
3 lines		
4 lines		
5 lines		
6 lines		
Top Foreman		

Marginal Notation—New.

4. Tallymen, Etc.

(a) Tallymen, etc., covered by this agreement shall be paid at the following rates:

Tallymen	$210.00 per month
Timekeepers	210.00 " "
Cannery Clerks	235.00 " "
Tally Captains	235.00 " "
Storekeepers	210.00 " "
Watchmen	150.00 " "

(b) Tallymen, etc., covered by this agreement, with the exception of watchmen, shall receive in addition to their monthly wages a percentage for each case of salmon canned at said cannery. The method of figuring percentage will be as follows:

At a 1-line cannery	$10.00 per thousand cases
At a 2-line cannery	5.00 " " "
At a 3-line cannery	3.33 " " "
At a 4-line cannery	2.50 " " "
At a 5-line cannery	2.00 " " "

Marginal Notation—New.

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

(c) There shall be one tally-captain, a member of this Union, on every tally station, who is to be responsible for all tally work, regardless of whom it is done by, on said station.

(d) Each tally station shall have a minimum of two (2) tallymen and one (1) tally captain from the Union.

There shall be no more than one (1) man tallying on any station other than from this Union.

5. Nurses.

(a) The monthly rate of pay shall be as follows:

Nurses	$210.00 per month
First-aid men	210.00 " "
Orderlies	150.00 " "

(b) Each nurse employed ashore before leaving shall be paid for an eight (8) hours day at the rate of $1.50 per hour. Any time the nurse is called for shoreside work, he shall be paid for at least four (4) hours, whether work lasts that long or not.

(c) The Company agrees to pay the Nurse, or First-aid men the sum of $20.00 for preparing a body for burial in Alaska, or at sea.

(d) In the event of a death of an employee and embalming is performed for burial in Alaska, $20.00 additional shall be paid the embalmer, and if embalming is performed for transporttaion and shipment, $50.00 additional shall be paid.

Marginal Notation—New.

(e) When nurses are required to care for any

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

patients not employees of the Company, the Company shall pay the nurse in addition to his regular salary the sum of four dollars ($4.00) per patient for each eight (8) hours, and one dollar fifty cents ($1.50) per hour overtime.

(f) For clinical patient not employed by the Company and treated by the nurse, the Company shall pay the nurse in addition to his regular salary, the sum of one dollar fifty cents ($1.50) per visit for each patient treated by the nurse.

6. Culinary Department.

(a) Kitchen personnel covered by this agreement shall be paid at the following rates:

Chief Steward	$200.00 per month
First Cook	180.00 " "
Second Cook	160.00 " "
1st Cook who bakes	190.00 " "
2nd Cook who bakes	170.00 " "
Night Cook	165.00 " "
Butcher	180.00 " "
First Baker	180.00 " "
Second Baker	160.00 " "
Waiters	110.00 " "
Scullion or Pot Washers	115.00 " "
Dish Washers	115.00 " "
Provision Storekeepers	140.00 " "
Combination Man	

Marginal Notation—Changed.

(b) Stand-by wages for all kitchen crew members shall be paid pro-rata at the daily pay of monthly wages, plus subsistence, if not furnished for eight (8) hours work from 8:00 a.m. to 5:00 p.m.,

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

except Saturdays, in which case the day shall terminate at 12:00 noon. If men are required to work Saturday afternoons, or after 5:00 p.m., or Sundays and/or Holidays, they shall be paid at the regular overtime rate.

Marginal Notation—Clarification new.

Section 30. (a) The Company guarantees each employee, working at a monthly or seasonal rate of wages as indicated under Section 1, employed in the Alaska cannery operations covered by this agreement hired outside the Territory of Alaska not less than two (2) months' wages in accordance with position as per classification, unless employee should be discharged or quits, as herein provided, and not less than three months' guarantee as outlined above for those employed in canneries normally operating three (3) months or more.

Marginal Notation—Same ?

(b) In the event that the cannery is destroyed, or so greatly damaged from any cause or the laws, rules or regulations with reference to salmon fishing or canning be changed, or that in the Company's judgment, because of strikes or for any reason, it would be impossible or unprofitable to continue operations, the Company shall comply with guarantee, excepting that the Company shall return each employee covered by this agreement to the point where hired at its expense and pay him until such return, unless employee should elect to remain in Alaska,

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

in which event his employment shall terminate at the cannery.

Marginal Notation—New.

(c) Unless expedition or operation is abandoned, any man who has signed the Company's agreement and has been accepted by the Company and is discharged shall be paid in full compensation, said compensation to be paid within forty-eight (48) hours after such discharge.

Marginal Notation—Same changed.

(d) Company shall furnish statements of earnings and deductions at least three (3) days before arriving at port of embarkation.

Marginal Notation—Clarification.

Section 31. Overtime. (a) Cannery Workers. For cannery workers, except residents on an hourly rate of wages, any work performed between 6:00 a.m. and 7:00 a.m., and from 6:00 p.m. to 10:00 p.m., shall be paid at the overtime rate of $1.00 per hour over and above the monthly and seasonal rate.

Marginal Notation—Up.

(b) The hours between 10:00 p.m., and 6:00 a.m. shall be designated the rest period for cannery crews, but if called to work shall be paid at the overtime rate of $1.50 per hour

(c) Residents. The overtime rate for Alaska resident cannery workers working on an hourly

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued).

rate of wage shall be paid at the rate of time and one-half.

Marginal Notation—New.

(d) Tallymen, etc. Overtime rate for tallymen, tally-captains, etc., shall be $1.50 per hour. Overtime shall be paid for all work performed between Saturday 5:00 p.m., until Monday, 8:00 a.m., except during actual fishing season. During actual fishing season, men shall work at all times without overtime.

Marginal Notation—New.

(e) Watchmen. Overtime shall be paid at the rate of $1.25 for all hours worked in excess of eight (8) consecutive hours.

(f) Nurses, etc. The overtime rate of pay shall be as follows:

Nurses	$1.50 per hour
First-aid men	1.50 " "
Orderlies	1.25 " "

Marginal Notation—New.

(g) Kitchen personnel. The overtime rate for kitchen personnel shall be $1.15 per hour, over and above the monthly or seasonal rate.

(h) Stevedore work. Stevedore work shall be paid for at the arte of $1.05 per hour between the hours of 8:00 a.m. and 5:00 p.m., and $1.50 per hour after 5:00 p.m., and before 8:00 a.m., in addition to the monthly or seasonal wages.

(i) Experimental work. Experimental work

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

shall be paid for at the rate of $1.00 per hour between the hours of 8:00 a.m., and 5:00 p.m., and $1.50 per hour after 5:00 p.m., and before 8:00 a.m., in addition to the monthly or seasonal wages.

(j) Miscellaneous work. Miscellaneous work shall be paid for at the rate of $1.00 per hour between the hours of 8:00 a.m. and 5:00 p.m. and $1.50 per hour after 5:00 p.m., and before 8:00 a.m. in addition to the monthly or seasonal wages.

(k) When actual overtime worked is less than one-half hour, one-half hour shall be paid. When overtime exceeds one hour, payment will be allowed on actual time worked, but not less than one-half hour.

(l) Daily overtime slips shall be given by the Company to each Delegate upon the completion of said overtime period.

Section 32. Holidays. (a) All Sundays and Holidays shall be paid for at the overtime rate.

(b) All Sundays, Memorial Day (May 30th), Independence Day (July 4th), Maritime Memorial Day, (July 5th); Labor Day, (1st Monday in September); Admission Day, (September 9th); and Saturday afternoon for culinary workers; and any other day that may be declared a Holiday by the Government of the United States, or by the State of California, State of Washington, State of Oregon, and Territory of Alaska, shall be declared Holidays.

Marginal Notation—Clarification?

(c) July 5th, if worked, shall be observed with at least a half-hour stoppage of work that a proper

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

observance may be held for Maritime Memorial Day. Such stoppage to take place from 2:00 p.m. to 2:30 p.m. The American flag shall be flown at half-mast from sunrise to sunset.

(d) When the Holiday falls on a regular rest day, the day immediately following shall be observed as a Holiday, and any work performed on that day shall be paid for at the overtime rate.

(e) Before, during, and after the actual canning season Sunday shall be the recognized day of rest each week for the entire cannery personnel covered by this agreement, in addition to all recognized Holidays, and all work performed on these days shall be paid at the applicable extra compensation rate agreed herein, excepting tallymen, etc., as otherwise provided, herein.

(f) The Union has designated June 24th as Alaska Memorial Day, to remind its members of the many who died in Alaska while working in the salmon canning industry. The Company shall supply all the necessary materials and tools and the Union all the necessary labor to repair, put in shape and recondition cemeteries.

Section 33. It is agreed by and between the Parties hereto that the Union may represent one, all, or any number of its members relating to any claim said member or members may have against the Company, arising out of any of the clauses of this contract, and that said Union may sue in its own name on behalf of its members, or one, any, or all thereof,

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

in order to procure adjudications of any claims arising hereunder enuring to the benefit of its members, the said Companies hereby waiving any technical defense to the right of said Union to sue in its own name as herein provided.

Marginal Notation—Same.

Section 34. It is agreed and understood that the formula and principles in drawing up an industry-wide agreement is in order to eliminate discriminatory practices covering contractual relations between employees and employers. But in the event certain conditions contained herein are not applicable, it may become necessary to make certain additions, amendments, exceptions, etc., which may be mutually accomplished by either provisos, memoranda, which in all cases must be signatured and indentured by both parties, attached and made a part hereof.

Marginal Notation—Same.

Section 35. Any conditions or benefits or terms of employment which have hereto been enjoyed by the employees covered by this agreement shall continue in force as in years past and shall not be taken away with the signing of this agreement.

CONCLUSION

The provisions of this agreement shall be binding until February 1, 1941, and shall remain in effect for succeeding years, except as to Section to which specific amendments are proposed in writing by the

(Testimony of Paul St. Sure.)

Respondent's Exhibit G—(Continued)

Company or the Union on or before February 1, of any year, which proposed amendments shall then become the sole subject for negotiation between the Company and the Union, and when any amendment is agreed upon it shall become a part of this agreement, and continue in effect as though it was originally a part of this agreement, subject to amendment as aforesaid.

Marginal Notation—New.

UNITED CANNERY, AGRICULTURAL, PACKING & ALLIED WORKERS OF AMERICA LOCALS 5, 226, 7, 237

Company:

....

....

....

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Q. Mr. St. Sure, was this document the first offer of terms and conditions for the Cannery Workers to work for the 1940 season which was offered to you? A. Yes, sir.

Q. On the date that you testified to, March 27th?

A. Yes, sir.

Q. At this meeting would you state briefly what occurred?

A. May I see the exhibit, please? (Indicating) My recollection is that at the meeting on March 27th a comparison was made with the 1939 contract in

(Testimony of Paul St. Sure.)

an effort to ascertain what changes, if any, were proposed by the union. The contract had been modified in form and in the order of terms, and on that occasion and, I believe, on a further meeting on the 29th of March clause by clause comparisons were made, not by direct reading back and forth but by requesting information from the union committee. And at that time notations were made both in my handwriting and in Mr. Moore's handwriting on the margin indicating whether the union stated the clauses in their 1940 proposal were the same as the old contract or whether they were new proposals or modifications or classifications. Pencil notations on the margin are the result of those discussions on the occasion of the meeting the 27th of March and 29th of March.

Q. At this meeting were those various clauses discussed and merits and demerits discussed?

A. I believe questions were asked and reasons given why changes were proposed. And in the main, however, the principal portion of the time was spent in endeavoring to find out where changes were being requested, and the extent of the changes and why they were being requested.

Q. Up to this time had the question of wages been discussed?

A. It was involved in the proposal that the union presented. There had been prior to that time, and my recollection is it was repeated to the Committee on the 27th of March. But at the 1st meeting on the 7th of March with the Maritime Federation

(Testimony of Paul St. Sure.)

Committee the statement was made that one of the principle objectives of the negotiations from the operators point of view was to endeavor to secure certain reductions, particularly in connection with overtime payments and conditions which were burdensome from the point of view of pay. In other words, the operators might reduce the loss they had taken the previous year in order that they might be more in line with the Seattle operations of their competitors. I believe the same discussion was had in general terms [119] during the course of these preliminary meetings with the Cannery Workers representatives; and I believe, likewise, it was indicated from the demands presented that the contract presented by the Cannery Workers Union on the 27th of March, 1940, indicated they were expecting considerable increases over the 1939 scale.

Q. In other words, the provisions in the proposed 1940 offer were higher than the 1939 San Francisco Scale? A. That is correct.

Q. And the statements that were made by you at that time and also had been made in previous times was in order to mitigate the loss which the Canners had suffered the previous year; so, consideration would have to be made to reducing the 1939 wage scale in San Francisco and to give proper consideration to it being placed down in the 1939 Seattle scale.

A. That is correct.

Q. Now, is it a fact that the San Francisco Can-

(Testimony of Paul St. Sure.)

ners are in direct competition with the Seattle Canners?

A. They are. They sell the same product to the same market.

By Referee Roden:

Q. How does it happen there is this discrepancy between the Seattle Operators and the San Francisco Operators?

A. They may not be better negotiators than the operators in San Francisco, but the unions may be easier to get along with. The fact is, the wage scales are all the way from 1% to 16% below the San Francisco Scales based upon a comparison of the 1939 operations of the two concerns or two sets of concerns. There are also various jurisdictional differences which apparently enter into that picture, in this. Out of San Francisco certain unions claim jurisdiction over the work and demand higher rates of pay for that work than are claimed out of Seattle. For instance, the Marine Cooks and Stewards operate out of San Francisco but they do not claim jurisdiction, over similar work out of Seattle. The rates are higher out of San Francisco for the Marine Cooks and Stewards than they are for the Fishermen and Cannery Workers who do portions of that work out of Seattle, and other things like that in some situations. However, the same unions, noticeably the American Communications Associations, I believe, the Cannery Workers on some operations, and most of the maritime crafts have offered and contracted for lower terms for

(Testimony of Paul St. Sure.)

the same work out of Seattle that they have asked higher rates for out of San Francisco. [120]

By Mr. Madison:

Q. There was some discussion yesterday as to whether this difference in wage scale for the Cannery Workers, which admittedly prevailed between San Francisco and Seattle, which was admitted to prevail in Central Alaska, did not prevail or prevailed only in a very limited way in the Bristol Bay operators. Have you any information as to that?

A. My impression is I would have to check the accurate comparisons. I have them on the total operations only and not broken down union by union. But there were differences in practically every operation to the disadvantage of San Francisco. I believe there was one exception in connection with the certain portion of the work the Machinists Union performed; but in every other instance the disadvantage was on San Francisco's back. And rates for each operation out of Seattle, both from the point of view of rates and Manning Scales and operations which affect the total labor cost, the benefits were from the operator's point of view in favor of Seattle and against San Francisco.

By Mr. Resner:

Q. May I interrupt just a minute? I understand you to say that applied to all unions? Without breaking it down to any particular union?

A. As to A.L.A. Union I know it is true. As to each union, my impression is it applies to each union

(Testimony of Paul St. Sure.)

with the exception of certain provisions in the machinists contract.

By Mr. Madison:

Q. Now, do you know whether it applies to the Cannery Workers Union?

A. My impression is it is. I would have to verify it. Those studies have been made and were made for the purpose of negotiations and before the negotiations.

Q. When you say to the disadvantages of San Francisco you mean it is to the disadvantage of the San Francisco operators and to the advantage of the San Francisco unions?

A. Yes. By that I mean under the contracts both generally and in every instance except one I mentioned, which, I believe, is the machinists contract, that the operating costs insofar as labor is concerned are higher in San Francisco for the same work than they are in Seattle or out of Seattle.

Q. Now, on April 1st the union wrote to its Alaska Salmon Industry announcing it was withdrawing from negotiations in San Francisco?

A. That is correct.

Mr. Madison: The letter will speak for itself. (Indicating) [121]

Mr. Resner: This is the letter where they say negotiations have been transferred to Seattle?

Mr. Madison: Yes.

I offer that in evidence and ask it be marked as Exhibit H.

(Testimony of Paul St. Sure.)

(Received in evidence as Exhibit H of Respondents.)

RESPONDENT'S EXHIBIT H

Alaska Cannery Workers Union
Local No. 5, C.I.O.

Affiliated to
United Cannery, Agricultural Packing & Allied Workers of America
Committee for Industrial Organization, Maritime Federation of the Pacific, San Francisco District Industrial Union Council
International Labor Defense of the United States
George Woolf, President
Karl G. Yoneda, Vice-President
Raymond Aguirre, Secretary

32 Clay Street
San Francisco
Phone EXbrook 4871

April 1, 1940

Registered
Return Receipt Requested
Alaska Salmon Industry, Inc.
230 California Street
San Francisco, California
Att'n: Mr. Paul St. Sure

Gentlemen:

We hereby notify you that we are withdrawing from negotiation of the Proposed 1940 Agreement submitted to you, but request immediate meetings

(Testimony of Paul St. Sure.)

with you on the matter of cannery improvements, provisions, and personnel.

All provisons of the agreement will be negotiated in Seattle, where Representatives of this Local are meeting with the Industry.

If you are not represented in Seattle, we feel that you should make arrangements to have your Representative sit with the Industry's negotiators.

Respectfully yours,

[Seal] SAM YOUNG
Secretary
ALASKA CANNERY WORKUNION #5

RD
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East More Canned Salmon - - Packed Under Union Conditions
(Union Label)55

Q. Now, in this period we have been discussing prior to April 3rd have you had meetings with the various unions?

A. From the 8th of March until the 19th of March there were no negotiations and no meetings with any of the unions affiliated with the Maritime Federation of the Paciffic. On the 19th of March we had our first meeting with the Fishermens Union. During the period from the 8th to the 19th each of these unions consistently took the position they

(Testimony of Paul St. Sure.)

would not bargain or discuss any 1940 contracts until their claims for the 1939 season had been adjusted to their satisfaction. The Fishermens Union met with us on that day to discuss, as they said, matters in connection with the physical equipment, that is, the matter of quarters and other conditions in Alaska as distinguished from a matter of wage agreements or agreements on the price of fish for Central Alaska. I believe there were other meetings established, which are detailed in a letter of April 3rd which I addressed to the unions and concerned the meeting of Marine Engineers on the 21st of March and the meeting of the Cannery Workers on the 27th, which I have described. The only other meeting in the interim being the meeting on the 22nd with the Cooks and Stewards.

Q. On April 3rd did you address a letter to the unions stating something would have to be done in order to permit the canners to make their plans and buy their supplies, and so forth?

A. That is correct. The negotiations were divided by circumstances into two portions, attempted to be divided; the first portion relating to the Central Alaska operations at Chignik and Karluk for the reason they were earlier in time from the point of view of preparations.

Q. By that you mean the sailing date is prior to that expedition than to Bristol Bay?

A. That is correct. On the 3rd of April, I might state, up to this time there had been no preparation made, no complete preparations made, for the sail-

(Testimony of Paul St. Sure.)

ing to Central Alaska by the Alaska Packers Association, which was only the one of the three concerns involved in the operations at Karluk and Chignik. And they were concerned because of the necessity of completing the purchase of [122] supplies and getting the ships in order to go in order to avoid the necessity of having to meet at the last minute, as in previous years they had been required to do, increased union demands in order to prevent a tieup of their operations after they had purchased supplies and were ready to sail. Because of the fact we had made no progress up to that date of any consequence in negotiations—that is, up to the 3rd of April—and because it was necessary to begin to complete preparations for sailing, this letter was addressed to the unions, all of the unions, outlining specifically the position of the three packers and particularly the Alaska Packers Association in connection with the seasons operations specifying dates for sailing and a schedule for operations both for Central Alaska and Bristol Bay, the reasons therefore, that is for establishing those dates, and outline of the meetings, correspondence, and negotiations that had been held up to that point. In addition, they informed the union of the dates before which agreements would have to be reached if operations were to be undertaken to Central Alaska; and, also, containing a specific statement of proposals made by the operators to each of the unions concerned with the negotiations, even though some of the unions had never to that time presented any demands to us or

(Testimony of Paul St. Sure.)

even agreed to meet with us. And the letter of April 3rd contains an outline of the specific offer made by the Alaska Packers Association to each of the unions which had uniformly been employed on the job during 1939 season requesting that they act upon those proposals or give us information concerning them before the date specified in the letter of April 3rd.

Q. Do I understand you to say some of these unions had never met with you up to that time?

A. That is correct.

Q. And never made any proposals whatsoever? Notwithstanding they have or had been invited to meet with you, as the testimony has already shown?

A. That is correct.

Mr. Madison: (Indicating)

Mr. Resner: This is in evidence.

Mr. Madison: You put it in for a certain purpose, just limited the introduction of it to a certain paragraph, as I recall. I am offering the entire letter at this time.

I would like to offer this letter in evidence and have it marked Exhibit I.

(Received in evidence as Respondent's Exhibit I.) [123]

RESPONDENT'S EXHIBIT I

(Copy)

April 3, 1940

To The Unions Concerned:

We are advised by Alaska Packers Association that if that Company is to operate at Karluk and

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

Chignik during the 1940 season, the S.S. Chirikoff must sail from San Francisco not later than April 17, 1940. Since it is necessary to prepare and make purchases for this expedition, if it is to be undertaken, all arrangements for employment for Central Alaska must be consumated on or before April 10, 1940.

If agreements for employment are not completed by that time, it will be impossible to attempt to operate at Karluk, and that operation will not be undertaken.

We are advised further by Alaska Packers Association that if there is no operation at Karluk, but an expedition is outfitted for Chignik only, the sailing date for the S.S. Chirikoff can be postponed to April 21, 1940, and the final date for making preperation to April 12, 1940.

Each of these dates represents the latest possible time that can be set, and no leeway is allowed for unfavorable factors of weather, break down, etc. The sailing schedule has been figured as follows:

Begin outfitting for Karluk and Chignik	April 10
Sail from San Francisco	April 17
Due Karluk	April 24
Due Chignik	April 25
Due Karluk again	May 2
Leave Karluk	May 7
Arrive San Francisco	May 14

This schedule, of necessity, will have to be maintained if an operation at Bristol Bay is to be attempt-

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

ed for 1940. This statement is based on the following schedule:

Sail from San Francisco	May 22
Due Karluk	May 29
Due Chignik	May 30
Due Bristol Bay	June 2

We are authorized to submit this information to you upon the basis that if the final dates indicated for preparing the respective expeditions are allowed to pass without complete agreements as to working contracts with all unions concerned, such expeditions cannot and will not be undertaken. The experience of past years has proven that unless a clear declaration of intention in announced by operators and unions alike, last minute demands, negotiated under penalty of great losses to the operators necessarily resulting from delayed expeditions, have placed an unfair burden on attempted operations. It is essential that we avoid a repetition of this procedure in 1940.

Because certain delays have been experienced already, we believe it is proper to outline the progress of negotiations to date.

Prior to March 1, 1940, all unions having contractual relations with salmon canners operating out of San Francisco, were advised of the termination of the 1939 agreements and of the necessity of negotiating new agreements for the 1940 season.

On March 4, 1940, offices were established in San Francisco by Alaska Salmon Industry, Inc., and on

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

March 8, 1940 a letter was addressed to each union signed by the San Francisco operators, certifying that Alaska Salmon Industry, Inc., was authorized to represent these operators in all negotiations for the 1940 season, but without representation that there would or would not be operation. This letter of authorization was prepared at the request of the unions affiliated with the Maritime Federation of the Pacific.

On March 6, 1940, these unions advised the office of Alaska Salmon Industry, Inc., that no negotiations would be undertaken without such authorization, and that even if such authorization existed, no negotiations would be undertaken by any union of that group until all prior claims of all unions of the group were settled to the satisfaction of the unions concerned.

In reply to this declaration, Alaska Salmon Industry, Inc., advised each union affiliated with the Maritime Federation of the Pacific as follows on March 6, 1940.

"Enclosed herewith is a statement from Alaska Packers Association Alaska Salmon Co; and Red Salmon Canning Company, indicating the extent to which Alaska Salmon Industry, Inc., is authorized to deal with you on their behalf. Your attention is drawn to the fact that such authority is strictly limited to negotiations regarding a contract for the 1940 season only, without any representation whatsoever that any of these canners will or will not operate

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

in Alaska this season, and that such negotiations can be directed only to matters immediately involving a possible 1940 contract without reference to any unadjusted matters arising out of previous collective bargaining agreements.

"Should you desire to present any claims arising out of operations for 1939 or prior years, you are requested to take them up directly with Mr. Fleager of Alaska Salmon Company, Mr. Peterson of Red Salmon Canning Company, or Mr. Everett Matthews of the firm of Pillsbury, Madison and Sutro, on behalf of Alaska Packers Association, as the case may . These gentlemen are already well acquainted with problems which have arisen under the previous contracts, and inasmuch as they have already had under consideration a number of these claims, it is the decision of these companies that they should follow such disputed matters through their final settlement.

"This office, on the other hand, has had no experience either with the previous contracts in general, or with the specific disputes which have arisen under them. We are prepared only to consider possible arrangements for the coming season. Will you therefore, please present any such claims immediately to the parties above named for further discussion.

"Since the companies individually are ready to meet with you concerning all prior claims, we believe it is obvious that all unsettled matters for previous seasons can be adjusted through proper legal channels without depriving either party of a

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

full and pair determination. Since this right of adjustment exists, and since the time factor is so vital to all parties concerned, we trust that you will not continue to take the position heretofore declared by you to the effect that the final settlement of all these separate claims in a manner satisfactory to you is a condition precedent to any 1940 negotiations. Such a position might jeopardize all possibility of operation, for it would require one party or the other to forfiture of a right to a full hearing under threat of a refusal to bargain.

"Consequently, we will appreciate your advising us in writing at your earliest convenience concerning the position which your group proposes to take in the light of this communication."

From March 8th, until March 19th, no negotiations were conducted with any of the unions affiliated with the Maritime Federation of the Pacific because of their refusal to meet, but on March 19, 1940, the Alaska Fishermen's Union presented to the Alaska Salmon Industry, Inc., a series of demands for changes in physical equipment in Alaska, together with certain contract changes. This union stated that specific replies concerning the requested physical changes would be required before any further negotiations would be carried on. Since that time, two further meetings have been had with the Fishermen's Union to discuss all matters presented by its representatives.

On March 21st, the Marine Engineers Beneficial

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

Association made an appointment for a meeting, but failed to appear, and despite our request for another appointment, none has been made.

On March 27th, meetings were had with representatives of the Marine Cooks and Stewards and with the Alaska Cannery Workers at which preliminary demands for contract revisions were presented. Further meetings to negotiate these demands were held on March 29th. We are now advised by the Alaska Cannery Workers Union, by letter dated April 2nd, that they are withdrawing from negotiations in San Francisco and will negotiate all agreements at Seattle.

Also, on March 29th, the representatives of the American Communications Association met with us for the first time and presented a proposal for a tentative agreement, and on April 2nd, the Marine Firemen presented their demands.

Negotiation meetings and conferences have been held with the Masters, Mates and Pilots, the Sailors Union of the Pacific, the Carpenters Union and the Blacksmiths Union. To date the two Machinists Unions have declined to meet for purposes of negotiation.

On the basis of this record and because of the pressure of time heretofore indicated, we deem it necessary to state in detail the proposals and counter proposals of the operators covering the work claimed by each union, with the understanding that unless existing differences can be adjusted or nego-

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

tiated before the dates hereinabove mentioned, the respective operations cannot be undertaken, despite our willingness and desire to operate if fair conditions are established.

In general, each union thus far contacted has been advised by the operators representatives that operating costs under union contracts have mounted to such an extent that no further increases can be granted, and further, that certain conditions, particularly those involving overtime claims of certain unions, must be corrected if the industry is to be enabled to continue in business. Upon this general premise, the operators hereby propose working agreements and conditions which they submit to be fair. Wherever changes from 1939 agreements are offered, the reasons for such changes are set forth in detail.

In making the following proposals and counter proposals, the operators desire to emphasize that they are in all instances equal to or in excess of conditions already established and approved by the unions concerned in their dealings with other industries and in dealings with competing operators in the same and allied industries. The salmon canners do not believe that they should be required to make further concessions which will cause their operations to be actually and competitively impossible without continuing heavy losses.

The specific proposals hereinafter listed are intended to cover possible operations in Central Alas-

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

ka only, and are not intended to apply to Bristol Bay. The possibility of operation at Bristol Bay will depend upon negotiation of working agreements of a mutually satisfactory nature, and it is hoped that immediate discussions will be undertaken by the unions concerned.

Although the time factor, and the refusal of certain unions above listed to negotiate at all, will make it difficult to discuss in detail all matter of difference resulting from the proposals and counter proposals made herein. Alaska Salmon Industry, Inc., is ready and willing to meet immediately with any or all union representatives to attempt to negotiate all matters requiring clarification before the beginning dates specified. The canners desire to operate in 1940 if the unions will agree to conditions making such operations possible.

Herewith are the proposals and counter proposals of the operators:

1. Alaska Cannery Workers Union: The agreement for operations out of San Francisco will be negotiated on a uniform basis at Seattle, with provosions to apply to all operations undertaken from California, Oregon and Washington. The San Francisco operators have authorized Alaska Salmon Industry, Inc, at Seattle, to represent them in those negotiations which are now in progress. In the event that satisfactory agreements are reached for Central Alaska and those operations are undertaken, or in the event that Bristol Bay operations

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

are undertaken on an agreed basis, cannery workers will leave on the May 22nd, expedition. Any employment, is of course, contingent upon operation.

2. Alaska Fishermen's Union: For Central Alaska operations, the 1939 agreement will be renewed, provided that modifications heretofore negotiated shall be reduced to writing and included in the agreement, and provided further that the provision for penalty of $75.00 if the expedition does not leave after men are signed on be eliminated. It is understood further that the floating equipment at Chignook Lagoon Cannery shall be handled, both on and off the ways, without payment of overtime.

3. American Communications Association: For Central Alaska expedition to Karluk and Chignik, the 1939 agreement and modification covering use of radio phones will be renewed with the exception that penalty overtime for copying press, making extra carbon copies or other work that is performed during regular, straight time schedule be eliminated. Overtime rates shall apply to work performed outside of straight time hours only.

4. Brotherhood of Blacksmiths: For Central Alaska operations, the 1939 agreement will be renewed.

5. Brotherhood of Carpenters: For Central Alaska operations, the 1939 contract will be renewed.

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

6. International Association of Machinists: For Central Alaska operations, the 1939 agreement, including provision for extension of the length of the season, will be renewed.

7. Marine Cooks and Stewards: For Central Alaska operations, the 1939 agreement will be renewed, on the basis hereinafter set forth, provided however, that any sections or conditions in conflict herewith are modified to conform with the following: Employees shall prepare, serve and clean up after three meals per day, and prepare, serve and clean up after coffee as customary during the day at straight time. In lieu of overtime for this work, each employee actually engaged in such service, shall be paid the sum of $200.00 for the season, in addition to straight time pay, or if a full season is not worked, a pro-rata portion of such sum.

Three hours overtime at $1.00 per hour will be paid to those actually engaged in preparing, serving and cleaning up after hot night meals, and one and one half hours overtime for those actually engaged in preparing, serving and cleaning up after night cold lunches or coffee or both.

Saturday afternoon, Sunday and holiday work will be paid for at double the regular straight time wage.

On Coastal voyages, the 1939 wage will be paid, provided other conditions are governed by the terms of the existing contract between this union

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

and the Shipowners Association covering coastal operations.

8. Marine Engineers Beneficial Association: For Central Alaska operations, the 1939 agreement will be renewed, provided that the same provision as that contained in the Masters Mates and Pilots 1939 agreement govering employment and reemployment in case of no operation is included.

9. Marine Firemen, Oilers, Watertenders and Wipers: For Central Alaska, the 1939 agreement will be renewed with the exception that the requirement that employment be guaranteed for fifteen men when ships are tied up be eliminated.

10. Masters Mates and Pilots: For Central Alaska operations, the 1939 agreement will be renewed.

11. Sailors Union of the Pacific: For Central Alaska operations, the 1939 agreement will be renewed provided that there be no extension of jurisdictional claims that will require employment of more workers, that fishermen be allowed to work barge as was customary prior to 1939, and that no more sailors be employed than actual operations require.

Radio press service will be made available to those crafts which received it during 1939, provided that in no case will the operators be obligated to supply it, if to do so would involve payment of overtime to any other craft. It should be generally understood that where changes herein

(Testimony of Paul St. Sure.)

Respondent's Exhibit I—(Continued.)

proposed affecting one union will likewise affect others, such as the above modification relating to press, appropriate changes must be made in other contracts to make them conform. Further, as previously stated, matters of clarification are subject to further negotiations as time permits.

In connection with demands heretofore made for changes in physical equipment, written replies will be submitted by the operators immediately and meetings to discuss these matters will be arranged if desired.

May we have your immediate reply to this communication.

Yours truly

ALASKA SALMON INDUSTRY, INC.

J. PAUL ST. SURE

JPS/CH

Mr. Examiner, it is quite often done in trials to read important parts of letters. That letter, to my mind, is an extremely important part of the negotiations and while I am sure you don't want me to burden the record by reading it all I would like to call your attention to the important nature of that letter so you will have the opportunity—I say I would like to point your attention to the entire letter because it is an important letter in the negotiations.

(Testimony of Paul St. Sure:)

Referee Roden: All Right.

A. I would like to make this comment, if I may, in view of the testimony given by other witnesses. That related primarily, I think, to Bristol Bay; in particular in connection with the statement if we had been able to reach an agreement with the Fishermen the entire operations would have been undertaken by the unions. In the main, the proposal for the Chignik and Karluk operations was an offer to renew 1939 conditions including fishermens conditions with slight exceptions only. The principle point of difference in those negotiations in regard to agreement was with the Marine Cooks and Stewards Union, in which their negotiations took the position certain over time, amounted to as much as 150% to 200% overtime, in base pay had to be corrected. In addition there were certain unions had not even communicated with us to discuss 1940 operations. But the generalizations testified to previous with relation to what may have been the situation on the 3rd of May and occurring subsequently did not apply in any respect to the conditions as of the 3rd of April or as of the 10th of April, which relates to the Central Alaska operations.

Q. In connection with this Central Alaska operation, it is true, is it not, that the Central Alaska operation affected only the Alaska Packers Association, to the exclusion of the Red Salmon Canning Company and the Alaska Salmon Company?

A. That is correct.

(Testimony of Paul St. Sure.)

Q. The Alaska Salmon Company and Red Salmon Company—their canneries are in the Bristol Bay area? A. That is correct.

Q. And Alaska Packers Association have canneries, likewise, in the Bristol Bay area?

A. They have them both in Central Alaska and Bristol Bay.

Q. Now what occurred next after this letter of April 3rd was sent to the Union?

A. On either before or immediately after that letter and in response to the notice that we received on the 1st of April from the Cannery Workers Union they were withdrawing from nego- [124] tiations in San Francisco I communicated with our Seattle Office and with Mr. Van Hoevenberg and he advised me Seattle would undertake to negotiate the Cannery Workers contract through the Seattle Office upon the understanding, to which we agreed, that the negotiations would be for a uniform contract to cover operations involving each of the three local unions concerned; and, likewise, be uniform insofar as operations were concerned from the companies' point of view both out of San Francisco, Portland, and Seattle.

Q. Mr. Van Hoevenberg is what relation to this picture?

A. He is the manager of, an employe of, the Alaska Salmon Industry, Incorporated, and in charge of the Seattle Office.

Q. And, so far as you know, he occupied the position of Negotiator in Seattle?

(Testimony of Paul St. Sure.)

A. That is correct.

By Referee Roden:

Q. Is he with Mr. Ellsworth up there? Isn't Ellsworth up there somewhere?

A. I should know the name. I should know if Mr. Ellsworth is connected with the office up there or not? My dealings have been connected with Mr. Van Hoevenberg.

(Remarks were made off the record.)

Mr. Madison: Mr. Ellsworth is the Secretary.

By Mr. Madison:

Q. Well, do you know, Mr. St. Sure, if Mr. Van Hoevenberg carried out the negotiations in Seattle was a result of which agreements were reached for Seattle operations?

A. I understand. I was informed by Mr. Hoevenberg agreement was reached on the basis for the negotiations by both the union and the Alaska Salmon Industry. By the union I mean the Alaska Cannery Workers. The Locals and Alaska Salmon Industry agreed there would be negotiations conducted for the purpose of securing a uniform contract for all operations, both San Francisco, Portland, and Seattle, in the Alaska Salmon Industry for 1940. I had reports from time to time from him concerning the progress of those negotiations and they then relate back to our situation here afterwards; but, insofar as the negotiations up to the time of the abandonment of the Central Alaska operations were concerned, there had been an agree-

(Testimony of Paul St. Sure.)

ments reached at Seattle with the Alaska Cannery Workers Union.

Q. Well, I am digressing now as to the point of time. I am just asking you generally if you know as a result of these negotiations in Seattle whether agreements with the various unions were reached and an expedition did leave Seattle and is now operating the canneries [125] in Alaska? Not the canneries of these San Francisco operators, of course, but the canneries of the Seattle operators?

A. That is correct. An agreement was reached. And even prior to the reaching of agreement there we understood that the Alaska Cannery Workers Union under a memoranda of various kinds permitted members of those unions to leave for the various operations in Alaska subject to an agreement still to be negotiated. A final agreement was reached, however, late in May, I believe, whereby a contract was signed or executed covering operations in the northwest or out of the Northwest to Alaska, but specifically stating that contract was executed upon the representation and understanding there would be no operations out of San Francisco. If there were to be operations out of San Francisco this season that the contract for San Francisco would have to be separately negotiated.

Q. It has been assigned, Mr. St. Sure, as an indication of bad faith the fact you were chosen to conduct negotiations here in San Francisco without any prior experience in canning salmon. Do you

(Testimony of Paul St. Sure.)

know what Mr. Van Hoevenberg's prior experience in canning salmon was, if any?

A. I believe he had no experience any more than I did in connection with the canning of salmon. He had had considerable experience in connection with handling labor negotiations.

Q. His former occupation was as assistant to Mr. Reed, with the Association of San Francisco Distributors, was it not, here in San Francisco?

A. That is correct.

Q. And their operations are local warehousing operations, having to do with the distribution of goods to retail stores in San Francisco Bay area?

A. That is correct.

Referee Roden: It is after twelve. Do you Gentlemen wish to adjourn now?

. . . At 12:05 p.m. the hearing was adjourned to reconvene at 2:00 P. M. [126]

Tuesday Afternoon Session

At 2:00 p.m. the hearing was reconvened by Referee Roden.

Referee Roden: Proceed.

MR. PAUL ST. SURE,

resumed and testified as follows:

Direct Examination

By Mr. Madison:

Q. Mr. St. Sure, at the end of the morning session you had just finished discussing the letter of

(Testimony of Paul St. Sure.)

April 3rd by the Alaska Salmon Industry, being sent to all the unions with which it was negotiating. What occurred thereafter?

A. I believe following that we had one or two meetings with the Alaska Cannery Workers Union at which Manning Scales and matters of the condition of porters and so forth were discussed. I believe one meeting was held on the 5th of April and another meeting was held on the 8th of April. And then on the 8th of April we received a letter from Mr. Cayton addressed to the Alaska Salmon Industry informing us all of the proposals which had been made in the letter of the 3rd of April which we had sent to the various unions had been rejected or were unacceptable to the organizations affiliated with the District Council No. 2 of the Maritime Federation of the Pacific and, likewise, informing us that all organizations except one—that was the machinists—were ready and willing to negotiate on the basis of the agreements they had originally presented and containing other statements about the necessity of time and getting back to negotiations and complaining about the manner of negotiations; and containing, also, some new requests for not signing on of certain doctors who had previously been employed.

Mr. Resner: We have already put this letter in.

Mr. Madison: I would like this marked Exhibit J. I offer that in evidence.

(Received in evidence as Respondent's Exhibit J.)

(Testimony of Paul St. Sure.)

A. Now, the same afternoon following the receipt of that letter I sent a telegram to each of the unions listed on this copy of telegram in response to the letter stating that in view of the rejection of the proposals by all of the unions and in view of the machinists' continued unwillingness to bargain and the Maritime Federation group's position that none would sign unless all signed that it was difficult to know what purpose would be served by resuming negotiations. But we were ready and willing to meet—giving the telephone number and time, and [127] so forth—for arranging any meetings they might desire. That telegram was sent to each of the unions listed on the copy which I have handed you. (Indicating.)

By Mr. Madison:

Q. Which machinists union do you refer? I understand there were two interested, both of whom made agreements in 1939 and sent men in 1939.

A. I think each took the same position. The letter, however, of the 8th referred merely to the machinists union, without specifying which of the two locals or lodges were concerned.

Q. One was the East Bay Lodge, Machinists Union? A. Correct.

Q. And the other was the International Union, Machinists Local No. 68? A. That is right.

Q. State, if you know, whether either or both of these unions are members of the Maritime Federation? A. I believe they are.

Mr. Madison: Is there any question about that?

(Testimony of Paul St. Sure.)

Mr. Resner: No. We will stipulate they are both affiliated with the Union Council. That is, where there are workers working for the Maritime Industry, you see. They have other persons not employed in the Maritime Industry.

Mr. Madison: Is it correct to say they are affiliated only for the purpose of this salmon operation?

Mr. Resner: In this particular hearing, yes.

Mr. Madison: I offer in evidence as Exhibit No. K this telegram.

(Received in evidence as Respondent's Exhibit K.)

RESPONDENT'S EXHIBIT K

(Copy)

Western Union

San Francisco, April 8, 1940.

Responding to letter of Bay Area District Council No. 2 Maritime Federation of Pacific delivered to Alaska Salmon Industry, Inc., at one o'clock this afternoon please be advised our proposals of April 3 remain open but are contingent upon acceptance on or before April 10. In view of rejection of these proposals by all organizations affiliated with the Council and in view of continuing refusal of Machinists to meet at all, together with your statement that tentative agreements must be reached with all Council Unions before any agreements will be signed, we fail to understand purpose to be served in resuming discussions of your original demands. However, should you desire to meet with our repre-

(Testimony of Paul St. Sure.)

sentatives for this or any other purpose during the next 48 hours you may make appointment by telephoning Yukon 0452 in San Francisco before 6 p. m. today or any time tomorrow. A further reply to your letttr will be delivered by messenger or by mail.

ALASKA SALMON INDUSTRY, INC.
BY J. PAUL ST. SURE

(The foregoing telegram was sent to each of the following)

1. Revels Cayton, Secretary
   Bay Area District Council #2
   Maritime Federation of the Pacific
   593 Market Street, San Francisco, Calif.
2. Alaska Cannery Workers Union
   52 Clay Street, San Francisco, Calif.
3. Alaska Fishermen's Union
   49 Clay Street, San Francisco, Calif.
4. Marine Cooks & Stewards
   86 Commercial Street, San Francisco, Calif.
5. Marine Engineers' Beneficial Association
   Room B, Ferry Building, San Francisco, Calif.
6. Marine Firemen, Oilers, Watertenders & Wipers
   58 Commercial Street, San Francisco, Calif.
7. International Association of Machinists Local 68
   Labor Temple
   16th and Capp Streets, San Francisco, Calif.

(Testimony of Paul St. Sure.)

8. East Bay Lodge, Machinists Union
560 Eleventh Street, Oakland, Calif.

Q. Mr. St. Sure, after you sent the telegram did you also send a reply to the letter of the Maritime Federation unions?

A. Yes. Under date of April 9th a letter was addressed to the unions affiliated with District Council No. 2, American Federation of the Pacific, which was specifically in reply to the letter of April 8th received from Mr. Cayton, which refers to the telegram I have just identified.

Mr. Madison: I will offer in evidence this letter from the Alaska Salmon Industry, Inc., dated April 9, 1940.

(Received in evidence as Respondent's Exhibit L.)

RESPONDENT'S EXHIBIT L

Alaska Salmon Industry, Inc.
230 California Street San Francisco, California
Telephone YUkon 0452

April 9, 1940.

To The Unions Affiliated with Bay Area District Council #2, Maritime Federation of the Pacific:

On April 3rd we wrote to each of the San Francisco Bay Area unions concerned with the operations of salmon canneries in Central Alaska and Bristol Bay outlining the wage and working conditions under which 1940 expeditions of San Fran-

(Testimony of Paul St. Sure.)

cisco operators would be undertaken. In that letter we stated the final dates for preparing and sailing, and declared that April 10th is the last possible date for outfitting for Karluk. To avoid last minute misunderstandings and delays, we submitted counter proposals to each union which had presented demands, and made proposals to each union which had refused to negotiate with us.

We stated further: "We are authorized to submit this information to you (relative to sailing schedules) upon the basis that if the final dates indicated for preparing the respective expeditions are allowed to pass without complete agreements as to working contracts with all unions concerned, such expeditions cannot and will not be undertaken." This declaration is unambiguous.

In addition, our letter advised you that the practices of previous years, which caused the postponement of union agreements until the final date for sailing and thus allowed "last minute demands, negotiated under penalty of great losses to the operators, necessarily resulting from delayed expeditions" and placed "unfair pressures on attempted expeditions" could be avoided only by a full declaration of intention by operators and unions alike. Consequently, the operators made such a declaration, and have informed you that they are able no longer to submit to unreasonable demands under renewed economic coercion.

Such coercion in the past has produced losses that cannot be suffered. Abuses in "overtime"

(Testimony of Paul St. Sure.)

rates, so-called "clarifications of conditions", and "penalty clauses", when added to basic wages higher than those paid by competitive and allied industries, have multiplied labor costs to an extent that simple mathematics compel a revaluation of our labor agreements to remove such unfair burdens.

Because of this situation, our letter of April 3rd was submitted to you on the following premise:

> "In making our proposals and counter proposals, the operators desire to emphasize that they are in all instances equal to or in excess of conditions already established and approved by the unions concerned in their dealings with other industries and in their dealings with competing operators in the same and allied industries. The salmon canners do not believe that they should be required to make further concessions which will cause their operations to be actually and competitively impossible without continuing losses."

It appears that the council-affiliated unions are unwilling to recognize the fairness of this premise.

On the contrary, in your letter of April 8th, you have advised us:

1. That our proposals are "unacceptable to all organizations" affiliated with the Maritime Council.

2. That "all organizations, save one, namely the Machinists stand ready and willing to ne-

(Testimony of Paul St. Sure.)

gotiate on the basis of the proposed agreements they have already submitted."

3. That "it will be necessary to have reached tentative agreements with all Council unions before any agreements will be signed".

From these statements, it is evident to us that if all unions must agree before any will sign, and if one union continues to refuse to negotiate at all, you intend to deny us the right to operate. This arbitrary stand on the part of some of your unions was one of the reasons which impelled us to write to you on April 3rd, and it now appears that your position is unchanged.

Yesterday we wired you as follows:

"Responding to letter of Bay Area District Council No. 2 Maritime Federation of Pacific delivered to Alaska Salmon Industry, Inc., at one o'clock this afternoon please be advised our proposals of April 3 remain open but are contingent upon acceptance on or before April 10. In view of rejection of these proposals by all organizations affiliated with the Council and in view of continuing refusal of Machinists to meet at all, together with your statement that tentative agreements must be reached with all Council Unions before any agreements will be signed, we fail to understand purpose to be served in resuming discussions of your original demands. However, should you desire to meet with our representatives for this or any other

(Testimony of Paul St. Sure.)

purpose during the next 48 hours you may make appointment by telephoning Yukon 0452 in San Francisco before 6 p. m. today or any time tomorrow. A further reply to your letter will be delivered by messenger or by mail."

The foregoing message did not comment on your charge of "bad faith" on the part of the operators as a result of "injecting attorneys as negotiators". Suffice it to say that we do not question your selection of bargaining representatives.

Further, in connection with your reference to a letter of March 1st declaring that you would not sail with certain doctors in 1940, we have no record of receipt of any such letter by any of the operators concerned.

From the entire record, we can draw no other conclusion than that you do not desire to consider the declaration of the canners that they "desire to operate in 1940 if the unions will agree to conditions making such operations reasonably possible." We reiterate that we are desirous of operating under fair conditions, comparable with those established in competitive and allied industries, but we are unable to operate if you will not grant to us the same conditions that you have granted to other such employers.

Despite the position taken by your organizations, however, we are still willing, as we stated in our wire to you of yesterday afternoon, to meet with you to negotiate or for any other purpose on or before Wednesday, April 10, 1940, and to consider or

(Testimony of Paul St. Sure.)

bargain concerning possible arrangements for expeditions in accordance with the sailing schedules set forth in our letter of April 3, 1940.

The decision rests with you. The introduction of false issues, such as the selection of bargaining representatives, will not shift the ultimate responsibility.

Yours truly,
ALASKA SALMON INDUSTRY, INC.
By J. PAUL ST. SURE

JPSS/OB

Q. Did you on April 9th receive a wire from Mr. Cayton, or from the Maritime Federation by Mr. Cayton, in regard to this matter?

A. I believe it was a letter. I believe on that date I received a further [128] letter from Mr. Cayton—in fact, two letters the 9th of April. One of them was specifically in reply to my letter of April 9th, which has been marked Exhibit L, wherein he reviewed the situation as the Maritime Federation saw it on that date and, also, on that date we received a letter setting forth or purporting to set forth the test of resolutions passed by District Council No. 2.

Mr. Madison: I will offer in evidence the first letter from the District Council of Maritime Federations to the Alaska Salmon Industry dated April 9th and ask that be marked Exhibit M; and I will offer a second letter dated April 9th from the same

(Testimony of Paul St. Sure.)

party to the same party purporting to contain a copy of resolutions passed by the Maritime Federation and ask that be marked Exhibit No. N.

(Received in evidence as Respondent's Exhibits No. M and No. N, respectively.)

RESPONDENT'S EXHIBIT N.

San Francisco Bay Area District Council No. 2
Maritime Federation of the Pacific
593 Market Street - San Francisco, California
DOUGLAS 0464

Cut

"An Injury to One is An Injury to All"
Union Label 173

Earl King, Honorary President
Henry Schmidt, President
Dave Thomas, Vice-President
Revels Cayton, Sec'y.-Treasurer
Trustees: C. A. Cameron, James Clayton, Patsy Ciambrelli.

April 9, 1940

Alaska Salmon Industry, Inc.,
230 California Street
San Francisco, California

Gentlemen:

This is to call your attention that in the Coordinating Committee meeting of April 9th the unions affiliated to the District Council #2 Maritime Federation of the Pacific went on record as follows:

(Testimony of Paul St. Sure.)

"That all canneries operated in 1939 under agreements with unions in the Port of San Francisco shall be operated in 1940 under agreements negotiated with the same unions."

I feel that the motion speaks for itself and that anyone acquainted with the Salmon Packing Industry is aware of its meaning and the fair purpose for which it has been made.

Very truly yours,
DISTRICT COUNCIL #2
MARITIME FEDERATION OF PACIFIC
REVELS CAYTON
Secretary

uopwa-34
c/c Alaska Salmon Company
Red Salmon Company
Alaska Packers Ass'n.

By Mr. Madison:

Q. Now, was there a further meeting held on April 9th or on April 10th?

A. On April 10th we met with the Committee of the Cannery Workers Union and, I believe, Mr. Anderson was, likewise, there. And there was a discussion concerning the memorandum agreement covering the members of the Alaska Cannery Workers Union in the event we were able to secure agreements with other unions which would

(Testimony of Paul St. Sure.)

permit us to go ahead with the Central Alaska operations. That is the proposal in view of the fact that the Cannery Workers contract was to be negotiated in Seattle the discussion was whether or not we could have a binding memorandum of some kind which would protect the operators here on the basis of agreement by the cannery workers union that they would abide by whatever agreement was negotiated in Seattle.

By Referee Roden:

Q. Wait a moment! When you speak about the Central Alaska operations, you mean?

A. Chignik and Karluk. Following a first meeting that I referred to with the representatives of the Alaska Cannery Workers Union on that day, the 10th of April, no understanding was reached as to the memorandum agreement, and a telegram was sent to the Cannery Workers Union by Mr. Anderson, a copy of which I hand you.

Mr Madison: We offer this telegram in evidence and ask that it be marked No. O.

(Received in evidence as Respondent's Exhibit O.)

RESPONDENT'S EXHIBIT O

WESTERN UNION TELEGRAM

April 10, 1940

You have previously advised us that you desire to negotiate all conditions for 1940 season through our Seattle office and that you have agreed to have

(Testimony of Paul St. Sure.)

resulting contracts apply uniformly for California, Oregon and Washington. Consequently we cannot sign memorandum with you on any other basis than one which will apply 1940 Seattle agreement to any operation we may undertake. If this is satisfactory to you such memorandum must be signed today if it is to cover Karluk with understanding any Karluk operation depends upon reaching agreements with other unions.

ALASKA SALMON INDUSTRY, INC.

J. PAUL ST. SURE

Send to Alaska Cannery Workers Union, 32 Clay St., San Francisco. George Anderson, 544 Market St., San Francisco.

Q. At that meeting on April 10th you have discussed, when did [129] it occur? The day and point of time?

A. Following the sending of this telegram the first meeting I mentioned, I believe, was during the morning. The telegram was sent during the middle of the day. And late in the day I received by messenger a written reply from Mr. Anderson, attorney for the Alaska Cannery Workers Union, Local No. 5, wherein he referred to the tel gram which I had sent saying he had not received it until he returned to his office in the afternoon at 4:15 o'clock; and wherein he stated that his union had originally suggested the memorandum because they

(Testimony of Paul St. Sure.)

felt that it would cover the operations going to Chignik and Karluk and the men would leave on the 17th of May as they had in the past, and stated that inasmuch as they had been told for the first time a few days before that the men wouldn't leave on the 17th of May they felt there was no necessity for having any memorandum agreement or any agreement. They would await the outcome of the Seattle negotiations. Following the receipt of that letter a meeting was arranged and Mr. Anderson and members of the Negotiating Committee for the Alaska Cannery Workers Union met at our office around six o'clock in the evening and we further discussed the situation at that time.

Q. Was there any statement as to what was to be contained in the memorandum?

A. Our telegram outlined the memorandum which we desired and Mr. Anderson quotes it; which is, there should be an agreement on the part of Alaska Cannery Workers, inasmuch as they had agreed there should be a uniform contract negotiated in Seattle they should agree with us if they sailed from this port for Central Alaska they would accept the terms of that negotiated agreement at Seattle which hadn't yet been completed, sort of a covering arrangement whereby both the union and ourselves would be protected upon the understanding that the Seattle 1940 terms would govern.

Q. The 17th of May? Or the 17th of that month?

(Testimony of Paul St. Sure.)

A. Well, I am not sure. Just a moment, let me check that. (Indicating) The 17th of April.

Q. You said the 17th of May. In your last question you referred to the 17th of April, the letter being dated April 10th, you are referring to the 17th of this month? (Indicating) A. Yes.

Mr. Madison: I offer this letter in evidence to be marked Exhibit P.

(Received in evidence as Respondent's Exhibit P.) [130]

RESPONDENT'S EXHIBIT P

Andersen & Resner
Attorneys at Law
544 Market Street
San Francisco
EXbrook 6146

George R. Andersen
Herbert Resner

April 10th, 1940

J. Paul St. Sure, Esq.
c/o Alaska Salmon Industry, Inc.
230 California Street
San Francisco, California

Dear Sir:

This afternoon you sent me the following wire:

George Andersen
544 Market St SFRAN

You Have Previously Advised Us That You Desire to Negotiate All Conditions for 1940

(Testimony of Paul St. Sure.)

Season Through Our Seattle Office and That You Have Agreed to Have Resulting Contracts Apply Uniformly for California, Oregon, and Washington. Consequently We Cannot Sign Memorandum with You on Any Other Basis Than One Which Will Apply 1940 Seattle Agreement to Any Operation We May Undertake. If This Is Satisfactory to You Such Memorandum Must Be Signed Today if It Is to Cover Karluk with Understanding Any Karluk Operations Depends Upon Reaching Agreements with Other Unions

ALASKA SALMON INDUSTRY INC
J PAUL ST SURE

This wire was delivered to my office and was seen by me upon my return thereto later in the afternoon at 4:15.

When we originally suggested the possibility of a memorandum agreement, such suggestion was made upon the basis that when your vessels left on the 17th of this month that many of the members of our union would be aboard said vessel in accordance with the practices of past years.

Our reason for suggesting the memorandum agreement was to avoid any unnecessary trouble, as we felt that possibly negotiations would not be completed in Seattle in time for our members to leave on the 17th. In other words, we thought we would operate as we have in the past, and the memoran-

(Testimony of Paul St. Sure.)

dum agreement would apply to those men who would leave on the 17th of this month.

At the time of making this suggestion you, for the first time advised us that no cannery workers would be taken to Alaska until the 22nd day of May. This, of course, is an attempt by your company to deprive many of the members of our union of 35 days employment in the Alaskan territory.

Upon being advised by Mr. Moore to this effect it was mutually understood at that time to-wit: about the 5th of this month, that there was no necessity for a memorandum agreement.

Our committee, including the writer, met with you today after you suggested a memorandum agreement and we told you that in view of the fact that you did not intend to employ any of our members until May 22nd, we did not see the necessity for having a memorandum agreement in view of the fact that negotiations would probably be concluded in Seattle prior to May 22nd.

If you desire to send any of our members to Alaska on the boat leaving on the 17th of this month, we will discuss the possibility of a memorandum agreement prior to that time, otherwise, we see no necessity for committing ourselves to any agreement, memorandum or otherwise pending conclusion of negotiations at Seattle.

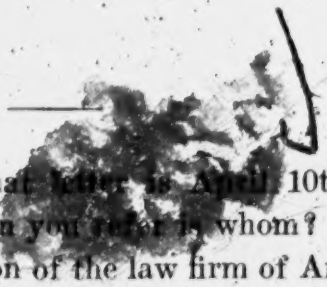
Yours very truly,

G. R. ANDERSEN

GRA*eb

(Testimony of Paul St. Sure.)

cc: Alaska Cannery Workers Union
Alaska Packers Association
Alaska Salmon Co.
Red Salmon Co.
George Woolf



Q. The date of that letter is April 10th. The Mr. Anderson to whom you refer is whom?

A. George Anderson of the law firm of Anderson and Resner.

Q. And Mr. Anderson was the attorney at these meetings acting for the Alaska Cannery Workers Union?

A. That is right.

Q. Did anything further happen?

A. Yes. During the meeting that we had on the evening of the 10th of April.

Q. That was after the letters?

A. After the letter had been received which has just been marked in evidence Mr. Anderson reiterated the matters which are stated in the letter, particularly stating that his union or the members of the union he represented, the Alaska Cannery Workers, had assumed that they were going to in the event the expeditions to Central Alaska sailed they would go on the first voyage, which in the previous year had left, I believe, on the 17th of April; and that, consequently, or had left whatever corresponding date of the first sailing that was scheduled for this year, 1940; consequently,

(Testimony of Paul St. Sure.)

his membership had felt that it was proper to consider a binding memorandum, because the time between the preparation for sailing and the first sailing was so short it would be necessary to have a memorandum agreement covering their previous agreement, to take the result of the 1940 Seattle negotiations, but that in view of the fact that it now developed it was not the intention of the packers, the Alaska Packers Association, to take the Alaska Cannery Workers on the first trip but to not take them until the second trip that they didn't think it was necessary and they shouldn't be expected to sign any memorandum agreement. They would rather sit back and wait the outcome of the negotiations in Seattle. We pointed out to them the very purpose of establishing the date before which all agreements should be negotiated was to prevent a repetition of what had occurred the previous year, which was that at the last moment the Alaska Cannery Workers had insisted upon going on the first voyage, even though there was no work for them as Cannery Workers until after the second trip to Central Alaska had been completed and that the Alaska Packers Association had consequently been required by the pressure of having the expedition tied up to take them on the first trip even though there was no work for them—but thereby the packers had been required to pay the additional salaries for the men last year, 1939, and therefore the argument that no memorandum was required didn't appeal [131] to us. That the

(Testimony of Paul St. Sure.)

very purpose of asking for the memorandum was to prevent a similar situation. And, further, it was stated by me that the understanding of Mr. Anderson that there had been no notice of the fact the men wouldn't be taken on the first trip until the 5th of April, which was the statement Mr. Anderson made, was not true.

I first pointed out to him on April 3rd in a letter which I had addressed to the various unions which was rather a long document setting forth the position of the packers we had specifically stated the men would not go on the first voyage. But long before that and on the 30th of September of the preceding year in a letter which is here, I believe our Exhibit A, Mr. Tichenor of the Alaska Packers Association had specifically told them that they would not be taken on the first voyage, and put them on notice of thaf fact so there would not be a repetition of the insistence upon their taking the additional men for an additional month, even though there was no work for them. Those matters were discussed between Mr. Anderson, the Committee, and myself and Mr. Moore on the evening of the 10th; and Mr. Anderson left saying that in any event the union was not prepared to and would not execute a memorandum of the kind that we desired, whereby they would agree to be bound by the outcome of the Seattle negotiations. That was the conclusion of the meetings on that day with the Cannery Workers Union.

(Testimony of Paul St. Sure.)

Q. When you speak about the first trip and the second trip—will you explain the operations there for the purpose of the record?

A. As indicated in the letter, I believe, of the 3rd of April, which sets forth the schedule for sailings as well as the offers to various unions to Central Alaska, the Schedule of sailings indicated that the ship which was to prepare for the Central Alaska operations would make, as was customary, two trips—the first trip taking those mechanics and other employes who were required to make preparation for the season and also supplies and materials and other equipment, making the call at various ports which were listed on the schedule which is set forth in April 3rd, and returning to San Francisco; making a second trip back to take additional men necessary to man the operations during the actual fishing season. When I say first and second trip I refer to those two trips as scheduled, as explained in the letter of April 3rd. [132]

Referee Roden: I understand your situation quite well in that respect.

By Mr. Madison:

Q. What happened next?

A. On the 11th of April, as confirmation of our position and discussions which were had on the evening of the 10th I wrote a letter to Mr. George Anderson in specific reply to his letter of the 10th, the one discussed at the meeting which intervened between my receiving his letter of the 10th and my reply to him under date of April 11th.

(Testimony of Paul St. Sure.)

Mr. Madison: I will offer this letter in evidence—Alaska Salmon Industry, dated April 11, 1940—and ask that it be marked Exhibit Q.

(Received in evidence as Respondent's Exhibit Q.)

RESPONDENT'S EXHIBIT Q

April 11, 1940

George R. Anderson, Esquire
44 Market Street
San Francisco, California

Dear Sir:

Replying to your letter delivered late Wednesday afternoon, I wish to confirm the statements made orally by me to you and your committee that evening.

First: Your statement that the Cannery Workers' Union first received notice on April 5th that its members would not be taken to Alaska until May 22nd, is incorrect. My letter of April 3rd addressed to the Union so stated, and as long ago as September of last year, the Alaska Packers Association informed the Union by letter that its members would not be taken on the Spring voyage.

Second: We have consistently requested a memorandum agreement covering possible 1940 operations, since the Union withdrew from negotiations in San Francisco and stipulated that the 1940 agreement would be negotiated in Seattle and have uniform application. You stated that you "see no

(Testimony of Paul St. Sure.)

necessity for committing yourselves to any agreement, memorandum or otherwise pending conclusion of negotiations at Seattle". You know that the sole purpose of making the Spring voyage to Chignik and Karluk is to prepare for cannery operations later in the season, and if the Cannery Workers' Union is unwilling to confirm its agreement to be bound by the Seattle negotiations we would be required to risk the loss of the outlay for this voyage and for supplies for the season without any assurance as to the intentions of the Cannery Workers' Union.

Third: As stated in the enclosed letter, the expedition to Karluk will not be undertaken. We respectfully direct your attention to the fact that unless employment agreements are reached by April 12th, the expedition to Chignik will not be undertaken.

We will be pleased to meet with you further should you desire to discuss the situation.

Yours truly,

ALASKA SALMON INDUSTRY, INC.

By J. PAUL ST. SURE.

JPSS/OB

Q. Did the unions request any meeting on April 11th?

A. There were meetings held in addition to the Cannery Workers Union. There were meetings

(Testimony of Paul St. Sure.)

held with the Cooks and Stewards. Two meetings on the 10th. Alaska Fishermen on the 10th; also, on the 9th and previous day with the Sailors' Union, the Alaska Fishermens Union; and with the Masters, Mates and Pilots on the 8th. That is, there were other meetings in progress up to the conclusion of the day, April 10th. On the 11th of April a further communication was sent by us to the unions concerned reviewing the situation as it then stood and particularly replying to the letter of Mr. Cayton which had been sent to us under date of April 9th. And the matter of this claim that an attempt was made to deprive the Cannery Workers of 35 days work in 1940 was likewise mentioned in this reply, specific reference made to the letter sent the previous September stating workers would not be employed on the earlier voyage.

Mr. Madison: I would like to have that letter introduced and marked Exhibit R. That is the letter of April 11th.

(Received in evidence as Respondent's Exhibit R)

[Printer's Note: Respondent's Exhibit R is the same as Claimant's Exhibit 11, set out at page 173 of this printed record.]

Q. Were there any further meetings on April 11th other than those two you referred to?

A. On the 11th we met with the Sailors Union of the Pacific, or its representatives, rather; and also, the Alaska Fishermen. In the letter of April 11th,

(Testimony of Paul St. Sure.)

which has just been marked in evidence, the unions were specifically advised that, although the operation which had been necessary to undertake by the 10th of April that that time had passed, there was the second of the operations [133] in Central Alaska which could be undertaken if the agreements were reached upon or before the 12th of April, that is, two days later. And again their attention was called to the fact we desired to complete agreements if it were possible to do so. There were no other meetings on that day, the 11th. And on the following day we received a reply to our letter of April 11th from their Mr. Cayton as Secretary of the District Council No. 2 outlining his view of the negotiations and stating they didn't wish to see any portion of the season lost and would like to endeavor to continue negotiations.

Q. This meeting on the 11th with the fishermen, were the wages discussed? Do you recall the terms of any proposed contract discussed at that time?

A. My recollection is there were discussions, but they related entirely to the possibility of reaching an agreement on the matter of the Central Alaska operations. We were in agreement there as to the wage structure generally, the differences being matters of conditions, some penalty clauses, and various changes in the conditions of the contract as distinguished from the questions of the wages in Central Alaska.

Q. Was there an accord reached at that time as to those conditions?

A. No, there was not.

(Testimony of Paul St. Sure.)

Q. One party taking one position and another another, unable to reach any accord?

A. That is correct.

Mr. Madison: I would like to offer at this time this letter dated April 12, 1940, San Francisco Bay Area, District Council No. 2, Maritime Federation of the Pacific, Alaska Salmon Industry, Inc., and ask that it be marked Exhibit S.

(Received in evidence as Respondent's Exhibit S.)

[Printer's Note: Respondent's Exhibit S is the same as Claimant's Exhibit No. 21 set out on page 256 of this printed record.]

Q. Did anything else occur under date of April 12th?

A. On the date of April 12th there was a brief meeting with representatives of the American Communications Association had on that day; also, I sent a telegram to Mr. Cayton replying to the conclusion in his letter of the 12th of April which had been sent to me, recalling the various proposals or notifications we had given and stating to him that we were still desirous of reaching conclusions within the limits of time that had been expressed in our letter of the 3rd of April.

Mr. Madison: I would like to offer in evidence this telegram from the Alaska Salmon Industry to Mr. Cayton dated April 12, 1940, to be marked as Exhibit T. [134]

(Received in evidence and marked as Respondent's Exhibit T.)

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT T

Western Union

April 12, 1940.

Send to:
Revels Cayton Secretary
District Council #2
Maritime Federation of the Pacific
593 Market St. San Francisco

Replying to the conclusion stated in your letter delivered this afternoon and asking us to call a a meeting of all unions, we have already notified each union in writing on March 4th, March 8th, April 3rd, April 9th; and April 11th. as well as verbally on numerous other occasions of our willingness to meet. Our offers to negotiate with any or all unions or their representatives have not been modified and are still open within the time limits stated in our letter of April 3rd.

Signed Alaska Salmon Industry, Inc.
By J. PAUL ST. SURE.

By Mr. Madison:

Q. At the meeting you mentioned with the Radio Operators Union were terms and conditions of their employment discussed?

A. Yes. They had indicated by telephone originally that they were making a request.—I say originally; that was early in March—for increases in overtime and, also, extensions of their jurisdiction

(Testimony of Paul St. Sure.)

to include hand telephone sets. We had no further meetings with them, and the brief meeting that I recall on the date that I last mentioned, too, was largely a matter of reiterating their position. But there was no detailed discussion of their agreement at that time with them.

Q. Were the demands they were making satisfactory to the operators?

A. No. We had indicated to them in our letter of April 3rd the basis upon which we felt an agreement should be reached. It was on the basis of modification of the 1939 agreement; although the wage conditions were to remain the same, the modifications being primarily an attempt to exclude certain overtime penalty pay which the union required of the San Francisco operators but did not require of the Seattle operators—particularly relating to the copying of press. Their contract out of San Francisco required that overtime be paid for the copying of press dispatches, regardless of whether they were copied or received on a regular scheduled ship or not; and, likewise, required overtime payments for the making of carbon copies. We felt those provisions should be eliminated as one of the overtime features which was unduly burdensome. Otherwise, the proposal was to renew the 1939 agreement.

Q. As a result of that meeting or at any other time did you reach an accord with this union?

A. We did not.

(Testimony of Paul St. Sure.)

Q. Taking the situation generally as it existed up to and including April 12th, at that time had you, representing the three employers in question, reached any agreement with any of the unions which are being discussed here as participating under such conditions?

A. No agreement reached with any unions affiliated with the Maritime Union of the Pacific, District Council No. 2. My recollection is an agreement was reached with the Blacksmith's Union.

Q. What occurred next after this April 12th date had passed?

A. There were no meetings then with any of the unions and none requested until—that is, by the unions—until the 18th of April [135] at which time we had meetings with the Fishermens Union and with the Marine Cooks and Stewards. On that day there were separate meetings for the purpose of endeavoring to discuss or arrive at agreements covering the Bristol Bay operations of the three companies—that is, Alaska Packers, Alaska Salmon, and the Red Salmon Company. On the following day there was a brief meeting with the Cannery Workers Union for the purpose of discussing hospital and kitchen requisitions, which the Cannery Workers Union desired to have provided by the Packers; and, likewise, discussion of the proposed Manning Scales in the event an expedition was made to Bristol Bay. Also, on the 19th of April there was a further meeting with the Committee of the Fishermens Union. I believe that on the last

(Testimony of Paul St. Sure.)

meeting that I have mentioned with the Alaska Cannery Workers Union, as on the 19th of April, they requested they be officially notified of the fact that the Alaska Packers Association would not operate at Chignik and Karluk for the 1940 season; and, in consequence, a letter under date of April 22nd signed by Mr. Moore was sent to them stating that fact.

Mr. Madison: I ask that letter be marked as Exhibit of the Companies next in order, marked Exhibit U.

(Received in evidence as Respondent's Exhibit U.)

RESPONDENTS' EXHIBIT U

April 22, 1940

Alaska Cannery Workers Union
32 Clay Street
San Francisco, California

Gentlemen:

In response to your recent request, we are informing you by means of this communication that cannery operations of Alaska Packers Association at Chignik and Karluk for the 1940 season have been abandoned because of inability to reach agreement with all labor organizations involved within the time set forth in our letter of April 3rd, 1940.

Yours truly

ALASKA SALMON INDUSTRY, INC.

By Edward H. Moore

EHM/OB

(Testimony of Paul St. Sure.)

Q. What next occurred?

A. On the 22nd of April there was a meeting with the representatives of the Marine Cooks and Stewards Union. On the 23rd of April another meeting with the representatives of the Cannery Workers Union, that is, their Committee; and, at that time they met specifically with Mr. Halsey and Mr. Cook of the Red Salmon Canning Company to discuss Manning Scales and requisitions. There were also meetings on that day with representatives of the Carpenters Union and their Committee, I believe. That is all that occurred so far as union negotiations on the 23rd.

Q. These meetings—when you refer to these other unions, do I understand that at each of these meetings the terms and conditions of offers or possibly counter offers as set forth in that letter of April 3rd were discussed?

A. They were. That is, not the offers set forth in the letter of April 3rd, necessarily, but those offers and the proposals where they were relevant to Bristol Bay were discussed. And in connection with the offers which were limited to the Central Alaska operations in the letter of April 3rd. Any other conditions or differences that were proposed by the unions were discussed in these [136] meetings I am referring to after the 10th of April. That is, up to the 10th or 12th of April discussions related to Central Alaska, Chignik, and Karluk, and after that any meetings refer to Bristol Bay possible operations.

(Testimony of Paul St. Sure.)

Q. What occurred next?

A. On the 24th of April there was a meeting with the Sailors Union of the Pacific; and, I think, it should be mentioned in connection with meetings with the Sailors Union there had been a number prior to this time and among other difficulties that we were experiencing was that the Sailors Union of the Pacific made specific claim to certain jurisdiction over work which theretofore had been claimed by and manned by the Fishermens Union. And all during these discussions as to Central Alaska as well as the discussions which followed through the Bristol Bay negotiations the Fishermens Union took the position it would not give up its jurisdictional claim over dock watchmen and beach bosses and various others, some of whom were claimed by the Sailors Union of the Pacific. The Sailors Union, particularly, claimed the right to supply dock watchmen and, likewise, claimed the right to perform all service aboard ships to the exclusion of the fishermen who previously had performed that work. So, there was that complication running through the negotiations as well, which was not finally adjusted even up to the time of the May 3rd date when the expeditions finally were abandoned.

Q. Now, in that connection, the Sailors Union of the Pacific, are they a member of the Maritime Federation?

A. No, they are affiliated with the American Federation of Labor.

(Testimony of Paul St. Sure.)

Q. The Fishermen affiliated entirely with the C. I. O.?

A. No, I believe not entirely, but I would say it this way. The American Federation of Labor Sailors Union is not affiliated with the American Federation of the Pacific. The American Federation of the Pacific is primarily, in this District at least, C. I. O. But I believe some of these unions which are affiliated of the Council here are still affiliated with the American Federation.

Mr. Resner: Fishermens Local No. 68 and the Firemen have A. F. of L. All the rest are C. I. O.

A. (By Mr. St. Sure) There is no particularly harmonious relationship between the Sailors Union of the Pacific—at least so far as these negotiations were concerned—and District Council unions of the C. I. O., or Maritime Federation, rather. [137]

Mr. Resner: Let me interpose an objection at this time. As I see it, this has nothing to do with the claim of these Claimants with regard to unemployment compensation. I don't think it is an issue in the case at all.

Referee Roden: I agree with you.

A. (Mr. St. Sure) Simply because of the position taken by the Maritime Federation unions it was all or not on the basis of the agreements; and we had this difficulty, through the basis of the claim presented by the Sailors Union. But it did involve the entire picture. That is the only reason I mentioned it.

(Testimony of Paul St. Sure,)

By Mr. Madison:

Furthermore, it does seem to have some bearing upon the question of whether these negotiations were being conducted in good faith. It shows the entire situation. What happened next?

A. On the 25th of April there was a further meeting of the Fishermens Union to discuss possible Bristol Bay operations; and on the following day a letter was sent to the unions concerned under date of April 26th pointing out the period that had elapsed since the last communication—pointing out the meetings which had been had. Particularly, stating that the the Alaska Salmon Company would not undertake to operate at Bristol Bay in 1940, we having just before that time been so advised by Mr. Fleager of the Alaska Salmon Company. And, again, in this letter we requested that the unions communicate with us and endeavor, if possible to do so, to reach agreements for operations at Bristol Bay by the Alaska Packers Association and Red Salmon Company, and those agreements to be reached before the 3rd of May if it were possible to do so because that was the last date upon which we could safely make preparations for the expedition.

Mr. Madison: This letter has already been introduced and marked Exhibit 6. And, if it hasn't been introduced in full, I would like to move at this time that the entire letter be deemed as part of the record. If it is necessary to give it a number as an entirety, I would ask that it be given, let us say, double-U (UU). I think it is already in.

(Testimony of Paul St. Sure.)

Mr. Resner: I have no objection to any of these letters going in as part of this whole picture.

Mr. Madison: I know. I think in some of the early part. (Indicating) Mark it next in order.

(Received in evidence as Respondent's Exhibit V.) [138]

RESPONDENT'S EXHIBIT V

Alaska Salmon Industry, Inc.,
230 California Street
San Francisco, California
Telephone YUkon 0452

April 26, 1940.

To The Unions Concerned:

On April 16th we sent a letter to each union representing workers concerned with the Bristol Bay fishing and cannery operations out of San Francisco for the 1940 season calling attention to the fact that it would be necessary to complete all working agreements or preparations if any expeditions were made, and pointing out that unless such agreements were reached with all unions within a reasonable time before the last safe date for sailing, the expeditions would not be undertaken. We requested immediate negotiation meetings in order that progress might be made.

During the ten day period that has intervened we have held numerous meetings with union representatives and have received proposals from each union, the last one being received today from the

(Testimony of Paul St. Sure.)

East Bay Union of Machinists. Such time as has not been occupied in meeting with union representatives has been spent by us in analyzing the union proposals and in preparing counter proposals in those instances where the union demands were not acceptable. These counter proposals have been communicated to a majority of the unions already and the remainder will receive them in written form immediately.

We do not believe it is necessary to repeat the statements made in our previous communications concerning the importance of time factor in connection with concluding these agreements. We do believe it essential, however, however, to inform you of the exact status of the operators we represent and what operations they intend to undertake if satisfactory agreements can still be reached. Consequently, we have to advise you as follows:

Alaska Salmon Company will not undertake any expeditions out of San Francisco to Bristol Bay in 1940.

Alaska Packers Association and Red Salmon Canning Co. desire to send expeditions and to operate at Bristol Bay during the 1940 season, but cannot and will not undertake to do so unless mutually satisfactory working agreements are reached with all unions on or before midnight of Friday, May 3rd, 1940.

In addition to this general letter which is being sent to all unions concerned, individual communica-

(Testimony of Paul St. Sure.)

tions are being forwarded to those organizations which have not yet discussed with us their proposals or our counter proposals, advising them of our desire to meet with them immediately. We will appreciate your communicating with us at once concerning further negotiations to the end that agreements may be completed, if it is possible to accomplish this before midnight on the 3rd of May, 1940. In this connection we must reiterate that all agreements must be completed before that time, otherwise the expeditions referred to will not be undertaken.

Yours truly,

ALASKA SALMON INDUSTRY, INC.

By J. Paul St. Sure

JPSS/OB

By Mr. Madison:

Q. On April 27th did anything occur?

A. On the 27th a letter was addressed to the Alaska Cannery Workers Union by the Alaska Salmon Industry, Inc., signed by Mr. Moore, stating in view of the fact that the negotiations for a contract with the Alaska Cannery Workers was being negotiated in Seattle to cover the Bristol Bay operations that we would appreciate their communicating with us.—That is, the Local Committee—for the purpose of endeavoring to execute a memorandum agreement covering the Bristol Bay operations of the same type of agreements we had endeavored to secure covering the Central Alaska operations.

(Testimony of Paul St. Sure.)

Mr. Madison: I ask that letter dated April 27th be marked as Exhibit W.

(Received in evidence as Respondent's Exhibit W.)

RESPONDENT'S EXHIBIT "W"

April 27, 1940

Alaska Cannery Workers Union
32 Clay Street
San Francisco, California

Gentlemen:

In view of the fact that negotiations between your organization and the Bristol Bay salmon packers operating out of San Francisco are being conducted through the Seattle office of Alaska Salmon Industry, Inc., we desire to discuss with your representatives as soon as possible the matter of a memorandum adopting the 1940 Seattle contract to whatever expeditions may be undertaken from San Francisco.

As our previous correspondence has indicated, it will be necessary that such a memorandum be executed not later than Friday, May 3, 1940, or it will be impossible to continue further with plans for Bristol Bay operations. We would therefore appreciate hearing from you at your earliest convenience in order that an appointment may be made to discuss this matter.

Yours truly
ALASKA SALMON INDUSTRY, INC.
By Edward H. Moore

EHM/OB

(Testimony of Paul St. Sure.)

Q. Now, did you on the same day send a wire to Mr. Cayton?

A. I did, on the 27th of April, a telegram addressed to Mr. Cayton requesting he communicate with us and give us such assistance he could to endeavor to work out agreements with the various unions with which he was acting as Coordinator.

Q. During the days we have been discussing was there any meetings with any of these unions? That is to say, the 26th, 27th, and 28th?

A. There were no meetings on the 26th, 27th, the 28th was Sunday. There was no meeting until the 29th. On the same day, the 27th of April, in response to the telegram I gave you a moment ago that I sent to Mr. Cayton I received a reply from Mr. Cayton saying he was only too happily to assist in reaching agreements, and so forth.

Mr. Madison: I would ask the telegram from Mr. St. Sure to Mr. Cayton, dated April 27th, be marked as Exhibit X.

(Received in evidence as Respondent's Exhibit X.)

RESPONDENT'S EXHIBIT X

Western Union Telegram

April 27, 1940

Revels Cayton, Secretary
Maritime Federation of the Pacific
593 Market Street
San Francisco, California

San Francisco Alaska operators advise us all con-

(Testimony of Paul St. Sure.)

tracts must be completed by midnight Friday May 3, or no expeditions will be undertaken. In view of considerable differences your offers to aid in negotiations if delays or disagreements threaten to prevent satisfactory agreements request you assist, if possible in securing adjustment of differences. Will appreciate discussing situation with you at your convenience.

Alaska Salmon Industry, Inc.
J. Paul St. Sure

And that the answer to the wire, Mr. Cayton sent to Mr. St. Sure, be marked as Y.

(Received in evidence as Respondent's Exhibit Y.)

RESPONDENT'S EXHIBIT Y

Postal Telegraph

1940 Apr 27 PM 1 55

MK50 28 DL 4 Extra—MK 27 148P

Paul St Sure—

Alaska Salmon Industries Inc

230 California St

San Francisco Calif—

Only too glad to assist in any way possible in

(Testimony of Paul St. Sure.)

arriving at agreements with Federation Unions and will contact you Monday for definite appointments—

Revels Cayton
District Council #2
Maritime Federation.

#2 also Revels Cayton.

Received April 29, 1940, 9 AM.

[Stamped] 1940 Apr 27 PM 4 28

Q. The 29th of April what occurred?

A. There were no meetings on that day, My recollection is Mr. Cayton communicated with me and stated he was busy with other matters or meetings on that day, and we did make an appointment to meet the following morning. And on the morning of the 30th Mr. Cayton met with me and Mr. Moore and we discussed the situation, discussed in detail, as I recall, the various [139] contracts, the condition of negotiation of the various contracts, and the difficulties we were encountering. And I remember discussing at considerable length with him the matter of the demands of the Marine Cooks and Stewards and our counter proposals to them and difficulties we were having in endeavoring to reach some agreement with the Marine Cooks and Stewards; also, discussed the situation with relation to the Fishermens Union, and Mr. Cayton discussed, likewise, with me the matter of the method of negotiation in that we had

(Testimony of Paul St. Sure.)

found it necessary, as we had stated in our letters, to endeavor to arrive to agreements prior to the time of investing considerable sums of money in equipment because of past experience whereby at the last minute individual unions, even though they only involved the employment of a few men, had been able to hold up the entire expedition by making last minute demands. My recollection at that time is Mr. Cayton expressed to me the statement it was his belief that he didn't blame us for attempting to negotiate upon that basis. That he understood what the purpose was of the attempted method of negotiation. I believe we discussed, particularly, the fact in the previous year the American Communications Association, one of the few or, rather, one of the unions he referred to as having but a few members, had, in fact, despite the lack of proportion to the total number of employes, succeeded in holding up the expedition the previous year until they were late in getting away and the demands had to be commanded by reason of that demand at the last moment. Mr. Cayton remained then and we had a meeting with the Union, Fishermens Union, and went over in considerable detail the various matters as to conditions and otherwise we had with the Fishermens Union in connection with the Bristol Bay operations at that time. A proposal had been made for reduction of the fish price and the fishermen indicated that this time and previously they felt the cut was too drastic. We discussed with them the fact one reason why the reduction had been made in addition to the attempt

(Testimony of Paul St. Sure.)

to reduce the Maritime Marine Cooks and Stewards compensation by getting rid of the overtime was that the Fishermens Union did secure the major portion both in units as well as in total amount of the labor revenue which was paid out in the Alaska expeditions; and in addition to that that the Fishermens Union granted through its Seattle Local conditions to the Seattle Operators which were not granted to the San Francisco Operators; and this, that the Fishermens Union supplied through Seattle [140] many of the employes in the culinary departments of the work there while that same work was granted by the unions here, or claimed here—and successfully claimed by the Marine Cooks and Stewards under conditions which were so much more drastic than those the Fishermens Union granted in Seattle that the net result was our operating cost by reason of the combination of the Fishermens Union and Marine Cooks and Stewards for the same work the Fishermen did alone in Seattle were far ahead of those in Seattle. We discussed for a couple of hours the contract that had been submitted or counter proposal by the Packers for the Bristol Bay operation at that time. Later in the day we had a further meeting with the Marine Cooks and Stewards. And there was a meeting scheduled with the Cannery Workers Union, but that did not occur. That is on the 30th of April.

Q. At these various discussions you had with the Union at this time and other times did you ever have the argument presented to you by the unions that no condition of the coming season could be less favor-

(Testimony of Paul St. Sure.)

able to the union that conditions of last season because their theory and practice was never to give up anything once gained?

A. That argument was advanced in many of the negotiations. I remember particularly one of the meetings that occurred about this time when I expressed the view or the fact it was essential or at least the Canners believed it was to prevent a loss or continuing loss in their operations—and a portion of the loss was a direct result of what we felt were unusually and non-competitively high labor costs. One of the union representatives, I believe it was Mr. Cobb of the Marine Cooks and Stewards, said that it was one thing for us not to operate at a loss, but they didn't want to, either. And for them to take a loss meant if they gave up any conditions they had already secured that, in effect, was operating at a loss. And, so far as they were concerned, the position was taken by the union they woulld not, could not, and should not, in fact, be asked to even consider reductions below the previous season's conditions.

There were, however, statements made by some of the unions in criticizing the conditions that had been secured by other unions; in other words, many of the unions we dealt with were perfectly willing to agree the other fellow had gotten more than the traffic could bear, but they would not admit their own union had secured any such condition.

Q. That is to say, the position they would take nothing less than they had before. Does that posi-

(Testimony of Paul St. Sure.)

tion apply to the position taken by the Alaska Cannery Workers?

A. So far as the actual negotiations with the Alaska Cannery Workers were concerned, the discussion of actual wages and conditions were being carried on, we assumed, at Seattle; and it wasn't until the last day or two when we came to the final attempt to secure a memorandum from them that they did express at that time a refusal to take anything which would go below the 1939 San Francisco conditions.

Q. And the same thing is true with the Fishermen, so far as their being unwilling to take anything less than 1939? A. That is correct.

Q. Did the Union write to you on April 29th a letter signed Mr. Whaley, one of the witnesses here?

A. That is correct—a letter on the 29th stating they were ready to discuss Manning Scales and Personnel general improvements.

Mr. Madison: I will introduce theis letter and ask that it be marked Exhibit Z. I don't think I offered that "Z", and I will make a formal offer for the purpose of the record.

(Received in evidence as Respondent's Exhibit Z.)

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT Z

Alaska Cannery Workers Union
Local No. 5, C. I. O.
George Woolf, President
Karl G. Yoneda, Vice-President
Raymond Aguirre, Secretary
32 Clay Street
San Francisco
Phone EXbrook 4871

Affiliated to
United Cannery, Agricultural Packing & Allied Workers of America
Committee for Industrial Organization
Maritime Federation of the Pacific
San Francisco District Industrial Union Council
International Labor Defense of the United States

April 29, 1940

Alaska Salmon Industry, Inc.
230 California Street
San Francisco, California

Gentlemen:

In answer to your communication of April 27th we wish to inform you that we are ready and willing to negotiate personnel and general improve-

(Testimony of Paul St. Sure.)

ments, at your convenience, for any and all Bristol Bay canneries that you choose to operate.

Yours very truly,

ALASKA CANNERY WORKERS UNION No. 5

[Seal]

M. WHALEY, per JBW.

M. Whaley, Chairman
Negotiating Committee

MW:D
uopwa—34

Received 4.05 P.M. April 29, 1940 Messenger Boy.

Eat More Canned Salmon—Packed Under Union Conditions
Union Label 65

Mr. Resner: Those wires are X and Y, are they not? (Indicating)

Mr. Madison: Yes. That is right.

Then, may I ask the letter from Mr. Whaley dated April 29th be marked Exhibit Z.

By Mr. Madison:

Q. Now, on April 30th did you send a letter to the unions Mr. St. Sure, summarizing the negotiations at that time? A. I did.

Q. You have described, have you, the meetings held on April 30th, already? A. Yes, sir.

Q. There were no other meetings than those you spoke of? A. That is all.

(Testimony of Paul St. Sure.)

Mr. Madison: I offer in evidence to be marked Exhibit AA letter from Mr. St. Sure to the Union dated April 30, 1940.

(Received in evidence as Respondent's Exhibit AA.)

RESPONDENT'S EXHIBIT AA

Alaska Salmon Industry, Inc.
230 California Street
Telephone YUkon 0452
San Francisco, California

April 30, 1940.

To The Unions Concerned:

On several occasions during the course of the current negotiations for working agreements in connection with proposed 1940 Alaska Salmon Cannery operations out of San Francisco, the charge has been made by Union spokesmen that the employers were not acting in good faith. This charge we have denied, both publicly and during negotiation meetings, only to be met with the further charge that we were issuing "ultimatums" and not making an effort to reach an accord.

In reply to these accusations and to evidence the true position of the operators, the following factual record of our dealings is submitted:

On March 6, 1940 all unions concerned with employment during the 1940 Alaska season were advised of our desire to negotiate working agreements.

(Testimony of Paul St. Sure.)

Our letters of March 8th, April 3rd, April 9th and April 11th, copies of which were sent to the Unions concerned, outline the course of negotiations in connection with the Central Alaska expeditions.

Expeditions to Central Alaska were abandoned because the two local lodges of the Machinists' Union refused to meet until disputed claims for prior years had been paid; the Alaska Cannery Workers Union declined to execute a memorandum agreement prior to the time set for the sailing of the preliminary expedition; and all other unions except the Master, Mates and Pilots and the Brotherhood of Blacksmiths rejected the proposals made in our letter of April 3rd.

On April 16th, following the abandonment of the Central Alaska expeditions, a further letter was sent advising all unions of the necessity of completing all negotiations before any preparations would be made to sail to Bristol Bay. This letter again stated our desire to operate, if satisfactory agreements could be reached, and requested immediate negotiations.

Following the sending of our letter of April 16th we met with representatives of the following unions:

1. Alaska Fisheremen's Union, on April 18, April 19 and April 25.
2. Marine Cooks and Stewards, on April 18 and April 22.
3. Alaska Cannery Workers Union, on April 19 and April 23.
4. Brotherhood of Carpenters, on April 23.

(Testimony of Paul St. Sure.)

5. Sailors Union of the Pacific on April 24.

Prior to April 16th, written proposals had been received from all other unions except the Machinists, but no meetings for purposes of negotiation were held with these unions after April 16, nor have any been held up to date, despite our repeated requests for such meetings.

Because of the approach of the opening date of the fishing season, and the necessity for purchasing supplies and making other preparations, a further letter was sent to each union on April 26th stating that all agreements had to be completed by midnight of May 3rd or the expeditions could not be undertaken. On the morning of April 26th the East Bay Machinists finally sent a written proposal to our office. By April 27th we had forwarded written counter proposals to all unions except the machinists and the radio electricians (A.C.A.), and those proposals were forwarded yesterday.

As of today, the situation relative to negotiations is as follows:-

1. The Brotherhood of Carpenters have rejected our offer to renew their contract which was in force last season.

2. The Marine Firemen have rejected our proposal to continue base wages and substantially the same basic conditions contained in last season's agreement, although the wages offered exceed those in effect under current agreements between the same union and other ship owners on the Pacific Coast.

(Testimony of Paul St. Sure.)

3. The Sailors Union of the Pacific have rejected our offer to renew their 1939 agreement, with minor changes not affecting wages, although the wages offered exceed those accepted by the same union from other ship owners on the Pacific Coast within the past few days.

4. The Brotherhood of Blacksmiths have accepted our offer to renew their contract which was in force last season.

5. The Alaska Fishermen's Union has scheduled further meetings with us to discuss our counter proposal which contains a reduction in the price for fish cought at Bristol Bay and other changes.

6. The Marine Cooks and Stewards have scheduled further meetings to discuss our counter proposal which contains reductions in overtime and penalty payments, but which offers to continue basic wages in excess of those accepted by the same union from other ship owners on the Pacific Coast.

7. The Machinists Union has not replied to our counter proposal which offers the same conditions as those already approved by the same union for operations out of Seattle in 1940.

8. The Masters, Mates and Pilots have scheduled further meetings to discuss with us our counter proposals which offer the same basic wages as 1939, with certain modifications as to working conditions.

9. The American Communications Association has not replied to our counter proposal which offers the same wages and conditions as those approved

(Testimony of Paul St. Sure.)

by the same union for work out of Seattle in 1939, and which exceed those now being asked of other ship owners on the Pacific Coast by the same union.

10. The Marine Engineers Beneficial Association has not replied to our counter proposal which offers to continue 1939 basic wages, which wages exceed those now approved, by the same union under existing agreements with other ship owners on the Pacific Coast.

11. The Alaska Cannery Workers have agreed to negotiate at Seattle on an industry-wide basis and have scheduled further meetings to discuss with us a memorandum agreement to cover such negotiations.

The counter proposals which we have submitted to each union are in accord with our policy as stated in our letter of March 3rd as follows:

> "Each union thus far contacted has been advised by the operators representatives that operating costs under union contracts have mounted to such an extent that no further increase can be granted and further, that certain conditions, particularly those involving overtime claims of certain unions must be corrected if the industry is to be enabled to continue in business."

In that same letter, the following statement was made also, and it applies to the employer's proposals for Bristol Bay operations:

> "The operators desire to emphasize that they

(Testimony of Paul St. Sure.)

(the proposals made by the operators) are in all instances equal to or in excess of conditions already established and approved by the unions concerned in their dealings with other industries and in dealings with competing operators in the same and allied industries. The salmon canners do not believe they should be required to make further concessions which will cause their operations to be actually and competitively impossible without continuing heavy losses."

We reiterate that the offers we have made, both as to contract conditions and for continuation of negotiations, are in good faith and in a sincere desire to reach agreements before the date when abandonment of preparation must occur. If operations at Bristol Bay are to be undertaken, all unions concerned must be willing to attempt to conclude negotiations in equal good faith and with the utmost haste.

We sincerely direct your attention once again to our letter of April 26th setting forth the date which controls these negotiations.

Yours truly,

ALASKA SALMON INDUSTRY, INC.

By J. PAUL ST. SURE

JPSS:EG

(Testimony of Paul St. Sure.)

By Mr. Madison:

Q. What occurred on May 1st?

A. On the 1st of May there was a meeting of the Cannery Workers Union Committee—Mr. Whaley was present, I believe. Mr. Anderson, was there, also—at which there were discussions concerning the matters referred to in the letter of April 30th. [142] I will have to change that. My recollection is wrong. That meeting was held in connection with a memorandum covering the Bristol Bay operation. But at that time we asked the union to agree to a memorandum which would provide that in the event that no agreement were reached at Seattle covering the Cannery Workers operation or working conditions that the 1939 Seattle agreement would be the basis for compensation and for working conditions. At that time the union insisted that the 1939 San Francisco conditions be the ones which would be the basis upon which to fall back in the event there was no 1940 Seattle agreement reached. At the same time we requested or suggested that a local agreement covering Daily men, who had always been separately dealt for the in San Francisco, be worked out inasmuch as there was some question as to whether or not Seattle would negotiate a contract or memorandum covering Daily men. Again the question of differences in jurisdiction affected us in that in Seattle the Daily men were not members in the same union in all instances as they were in San Francisco. Those discussions lasted for an hour or better during the morning of the 1st of

(Testimony of Paul St. Sure.)

May. Then, there were further meetings in May. A meeting was had with the representatives of the Machinists Union during the afternoon of that day.

Q. May 1st?

A. May 1st, yes, I would like to state about this time or a day or two before this time written counter proposals were prepared and submitted by the Alaska Salmon Industry, Inc., to each of the unions with whom we had been dealing or attempting to deal over this period. And I have here copies of the counter proposals which were forwarded to each of the unions as a basis for discussion in an effort to summarize the previous negotiations that we had had and to, likewise, constitute a counter proposal upon which the unions could act in advance of the deadline, so-called, that had been set for the 3rd of May. These agreements or counter proposals, rather, were specifically addressed to the American Communications Association, Carpenters Union, the Firemen, Engineers, Marine Cooks and Stewards, Sailors Union, Machinists Union—that is, the two unions concerned. The Fishermen's Union; the Masters, Mates, and Pilots; Cannery Workers Union not being included because of the fact the specific negotiations on wage conditions were being conducted in Seattle.

(Remarks were made off the record.)

Mr. Madison: May I ask for a recess for about two minutes? [143]

(Testimony of Paul St. Sure.)

Mr. Resner: I will be willing to stipulate with this proviso, the claims of all the Claimants together with the names of the 1939 personnel of Alaska Salmon be copied into the record—all other exhibits not to be copied into the record.

Mr. Madison: In other words, you stipulate as I have said with the exception of Exhibit marked No. 14. Is that correct

Mr. Resner: No. 14 and No. 5.

Referee Roden: What is No. 5?

Mr. Resner: No. 5 is the letter from Mr. Anderson to the Alaska Unemployment Compensation Commission regarding the claim of Frank L. Aragon together with a list of all the other claimants that we have at this time, a list of as having made claims. No. 14 is the personnel for the 1939 season of the Alaska Salmon Company. And these two we want copied into the record. The others it is not necessary.

By Mr. Madison:

Q. Do In understand that these proposals which you have just referred to were given to the unions referred to in these proposals?

A. That is correct.

Mr. Madison: I will ask that group of proposals be marked as Canners Exhibit BB.

(Received in evidence as Respondent's Exhibit BB.)

CLERK'S COPY.

Vol. II

TRANSCRIPT OF RECORD

(Pages 395 to 767)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 309

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE, ET AL., ETC., PETITIONERS,

vs.

FRANK L. ARAGON AND OTHER APPLICANTS, MEMBERS OF ALASKA CANNERY WORKERS UNION LOCAL No. 5, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 10, 1945.

CERTIORARI GRANTED OCTOBER 8, 1945.

No. 10425

United States

Circuit Court of Appeals

For the Ninth Circuit.

FRANK L. ARAGON and Other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL No. 5 on Behalf of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as Members of and Constituting Said Commission, and ALASKA PACKERS ASSOCIATION, a Corporation, ALASK SALMON COMPANY, a Corporation, and RED SALMON CANNING COMPANY, a Corporation,

Appellees.

Transcript of Record

In Two Volumes

VOLUME II

Pages 395 to 767

Upon Appeal from the District Court of the United States
For the Territory of Alaska
First Division

Rotary Colorprint, 590 Folsom St., San Francisco

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT BB

Our counter proposals.

1. American Communications Assn.—by letter to Hansen.

2. Carpenters—1939 contract.

3. Firemen—proposal attached

4. Engineers—Steam & diesel and gas operators proposal attached

5. Cooks proposal attached

6. Sailors—will have to get copy—in general, 1939 contract with percentage in lieu of overtime

7. Machinists—offered basic 1940 Seattle contract—will have to get copy.

8. Fishermen—covered by letter of April 19.

9. Masters, Mates & Pilots—1939 contract with percentage in lieu of overtime—will get copy.

(Copy)

April 29, 1940

American Communications Association
Hansford Building
268 Market Street
San Francisco, California
Attention Mr. Hanson

Gentlemen:

In accordance with our letter of April 26, 1940, we we submit to you the following proposal for anticipated operations of Alaska Packers Association and Red Salmon Canning Company in Bristol Bay for the 1940 season.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

As our proposal we submit to you the 1939 contract between the American Communications Association and the Seattle Salmon Canners, a copy of which is enclosed herewith, together with the following modifications:

1. Additional conditions covering Radio Operator Tallymen shall be:

a. Radio Operator-Tallymen shall receive the sum of $163.00 per month.

b. Radio Operator-Tallymen shall work any 8 hours out of 24, between midnight and midnight, without payment of overtime.

c. Radio Operator-Tallymen may be required to perform tally work not to exceed 4 hours during any day. Any tally work in excess of 4 hours during any day shall be paid for at the regular overtime rate.

d. After arrival in Alaska and prior to the fishing season Radio Operator-Tallymen may be required to perform duties involved in installation of electrical and radio equipment and such additional Tallymen duties as were performed during the 1939 season by Radio Operator-Tallymen, provided that such work shall not exceed 8 hours between the hours of 8 a.m. and 6 p.m. during any day, and still further provided that such work does not infringe upon the jurisdiction of any other union whose members are employed in Alaska.

2. Radio Officers shall receive and copy radio press or news dispatches during the regular straight

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

time working period without payment of overtime, and shall make such copies thereof during regular straight time working period as may be required, without payment of overtime.

3. The union shall agree to furnish competent men within the employments covered by the contract.

4. There shall be no obligation on the Company's part to furnish radio press or other news service if to do so would require payment of overtime to any of the Company's employees.

5. There shall be no obligation on the part of the Company to continue any employment or compensation hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

6. The contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party in writing of termination of the contract ar requests re-negotiation.

As we have previously advised you, it will be necessary for us to have reached agreements with all unions involved not later than Friday, May 3,

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

1940, if any expeditions are to be undertaken to Bristol Bay this season by the canners.

Yours very truly,

ALASKA SALMON INDUSTRY, INC.

By EDWARD H. MOORE

EHM: CH

Pacific Coast Marine Firemen, Oilers, Watertenders and Wiper Association

Agreement

This agreement entered into this ------ day of May, 1940, between Alaska Salmon Industry, Inc. (representing Alaska Packers Association and Red Salmon Canning Co., herein referred to as the Company), and the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association (herein referred to as the Union),

Witnesseth:

Wages

Section 1. On vessels operated in coastal voyages to Alaska and return without any regular members of the crew being assigned to work ashore in the canneries, or without the vessel engaging in fishery operations:

Foremen	$105.00 per month
Oilers	105.00 " "
Watertenders	105.00 " "
Utilitymen	105.00 " "

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 2. On vessels engaged in cannery voyages, when part of engineroom crews are assigned to work ashore in the canneries, or vessels engage in fishery operations:

Firemen	$145.00 per month
Oilers	145.00 " "
Watertenders	145.00 " "
Unlicensed Junior (Etolin)	145.00 " "
Utilitymen	145.00 " "

These wages shall apply from date of joining in San Francisco until arrival back in the same port.

Section 3. When men are hired for standby, they shall be paid at the flat rate of Six Dollars and Fifty Cents ($6.50) daily. For work during the standby period on Saturday afternoons, Sundays and holidays, and in excess of eight hours, they shall be paid at time and one-half of the overtime rate.

Section 4. The wages of monthly men kept by on the Company's vessels until the 1941 season shall be at the rate of $140.00 monthly.

Section 5. Men assigned as pumpmen at Nushagak shall have the sum of Twenty-five Dollars ($25.00) added to their compensation for the season, for preparing their own meals. Relief pumpmen at Nushagak shall receive Ten Dollars ($10.00) in addition to their regular wage.

Section 6. Men assigned to coal burning tugs at canneries shall be paid Twenty Dollars ($20.00) per month in addition to their regular wages during the period of such assignment.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Overtime and Overtime Rates

Section 7. The overtime rate shall be One Dollar ($1.00) per hour. It shall be paid in unbroken hours for work performed as follows:

(a) For all work in excess of eight hours daily.

(b) For all work performed on Saturday afternoons, Sundays and holidays while vessel is in port, or men are ashore in the canneries.

In port shall mean while the ship is alongside the dock or anchored in the roadstead.

Overtime starts with FWE Boll on arrival, ends with All Clear on departure.

(c) For excessively dirty work, and for work in tanks, cleaning tank tops and bilges.

(d) When directly engaged in loading or discharging bulk oil for other parties from which revenue is derived by the vessel on which they are employed.

(e) When transferred to shore in barges or tugs or back to the ship when the hours of labor and traveling time exceed eight on any one day reckoned from midnight to midnight, or when such traveling time occurs on Saturday afternoons, Sundays or holidays.

(f) For firemen at the canneries relieving for meals; the fireman making such meal relief for the 8 to 4 to 12 watches shall be credited with one-half hour's overtime.

(g) As provided for violations of sections as mentioned hereinafter.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

(h) As provided in the working rules.

Section 8. Holidays observed under this Agreement shall be: New Year's Day, Washington's Birthday, Lincoln's Birthday, Memorial Day, Independence Day, Labor Day, Armistice Day, Thanksgiving Day, and Christmas Day. In port, all holidays observed by the International Longshoremen and Warehousemen's Union.

Section 9. During weekends in ports, when firemen are standing eight-hour watches, the twelve hours overtime on Saturday afternoon shall be divided equally between the three watches.

Section 19. When men are called on to work cargo (Longshore work) the rate of One Dollar and Ten Cents ($1.10) hourly shall be paid. When working penalty cargo, the penalty rate shall also apply.

Section 11. The engineroom delegate shall check his overtime records daily with the Chief Engineer, for engineroom work; and the Chief Mate for cargo work; and superintendent or authorized agent for cannery overtime.

General Rules and Living Conditions

Section 12. Members shall be supplied with clean white linen once each week, clean spread, bath and face towels, distinfectant soap and laundry soap and matches. They shall have sufficient clean blankets. Linen shall be changed every Monday. Delegates shall notify steward, captain or superintendent,

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

in writing of any breach of this clause, retaining duplicate copy for reference; and, when thereafter they are not supplied with clean linen change, men shall be entitled to penalty money at the rate of one hour's overtime for each day during which such change was not accomplished. Men shall be responsible for linen and blankets furnished.

Section 13. The Company shall not discriminate against any men because of Union activities. Men shall not be required to go through picket lines established by organized labor, or will they be required to work if the vessel, or the deck at which the vessel is lying, is picketed by organized labor. Any disputes unable to be settled shall be referred back to the membership at Headquarters through the usual procedure established for settling disputes.

Section 14. (a) In the event of shipwreck or disaster necessitating abandonment of the vessel, members shall be paid all moneys due them; first-class transportation, maintenance and wages back to San Francisco; provided, however, shipwrecked men may be transferred to another of the Company's vessels. When the men's personal belongings are lost in such disaster or shipwreck, the sum of One Hundred Dollars ($100.00) shall be paid in addition to cover such loss.

(b) Any member laid up through sickness or accident, who is unable to work according to the judgment of a physician, shall be paid all earnings up to the date so laid up, and thereafter be paid his

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

monthly wages, transportation and subsistence until placed in a hospital in San Francisco or Seattle.

(c) Members may be discharged in Alaska for refusal to perform work under the terms of this Agreement, or for other just cause, and wages shall cease at date of such discharge. Men discharged shall be given free transportation and subsistence on Company's vessels to San Francisco.

Section 15. All members while engaged under this Agreement shall receive medical and surgical attendance; and medical and surgical necessities on the vessel. Sea stores, cigarettes, tobacco and other slop chest supplies shall be stocked and sold on the basis of cost plus 10%.

Section 16. Members shall have separate quarters, washroom with fresh water shower, and toilet. These quarters shall not be shared with, or used by any others than the ship's unlicensed engineroom personnel. Quarters and washrooms shall be adequately heated. Rooms shall have mirrors, lockers and benches; bunk lights shall be supplied where possible. No bunk shall be more than two high. In the mess-room, all dishes shall be crockery ware. Unlicensed engineroom personnel shall have separate table in messroom on each vessel, and night lunch furnished for their exclusive use.

Section 17. There shall be at all times sufficient first-grade foods for the requirements of the crew, to include first-grade meats, fresh fish, and fresh

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

fruits and vegetables where possible. All ship's personnel shall be fed alike.

Section 18. Meal hours and Relief for Evening Meal: Meals shall be served as follows: Breakfast from 7:30 to 8:30 A.M.; Dinner from 11:30 to 12:30 P.M.; Supper from 5 P.M. to 6 P.M.

While on sea watches, the twelve to four and eight to twelve watches shall relieve the four to eight watch at 5 P.M. for supper on alternate days. No overtime shall be required paid for such relief.

Fifteen minutes between the hours of 10 and 10:30 A.M. and between 3 and 3:30 P.M. shall be allowed for coffee. This privilege is not to be abused.

If necessary, members shall prepare their own coffee without expense to the Company. The Company shall supply the necessary percolators, coffee, etc.

Section 19. When men are on the monthly scale, and, for any reason, such as fumigation or temporary shutdown, have to eat or sleep ashore, they shall be allowed Seventy-five Cents (75c) each for breakfast and dinner, One Dollar ($1.00) for supper, and Two Dollars ($2.00) for room rent.

Section 20. Engineroom crews shall not be laid off when arriving back in home ports and scheduled to return to Alaska within ten days but shall continue in the employ of the Company all through the season.

Section 21. Making any payment where liability exists, does not release the Company from liability.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 22. It is expressly agreed that no engineer, agent or official of the Company, or any Union delegate or member, has the power or the authority, to change the provisions of this Agreement in Alaska. Disputes shall be settled in San Francisco directly between the Union and the Company.

Section 23. If voyage is abandoned, due to delays caused by labor conditions, these prospective employees included in this Agreement will be paid only for the actual number of days worked at their respective wages.

Section 24. When ship is in port or roadstead, and ship's plant shut down and heat and electricity is not furnished, members of crew shall be allowed One Dollar ($1.00) per night for lodging.

Working Rules

Section 25. Setting and Breaking Sea Watches:

(a) Sea Watches shall be set not later than twelve noon on the day of departure.

(b) In port the Chief Engineer shall decide when and if necessary to break Sea Watches, which, however, must be broken at twelve noon or twelve midnight.

(c) When Sea Watches are set and the ship fails to sail within twelve hours from the time watches are set, all time in excess of the twelve hour limit shall be paid at the overtime rate. This shall not apply in the event the delay is caused by a labor dispute, however.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

(d) When Sea Watches are broken, and donkey watch is maintained, the donkey watch shall consist of the following: if cargo is being worked, one watertender or one oiler, and one fireman. When cargo is not being worked, only one fireman shall be required on watch, (with the exception of the Etolin).

Section 26. (a) When cargo is being worked an oiler shall be assigned to oil winches. He shall work any eight (8) hours in twenty-four (24) hours without payment of overtime.

Section 27. The following clarifications shall determine the duties of the respective engineroom personnel on the ships:

Firemen—Standing Sea Watches: Where there are no watertenders, he shall keep steam, watch oil-pressure and temperatures, clean strainers and burners. He shall not oil any auxiliaries outside the fireroom; tend water, or do any work not directly connected with the steaming of boilers. Firemen may be assigned stations not below floorplates, or higher than ten feet from the floorplates. All cleaning work shall be confined between the hours of 8 A.M. and 5 P.M. on week days, and 8 A.M. to noon Saturdays. Any cleaning outside these hours shall be overtime. On all watches, however, he shall clean up excess oil occasioned by changing burners.

Firemen shall not blow tubes, except on an overtime basis, but may be required to assist by helping to close smokebox doors, and turning steam on and

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

off, automatic blowing of tubes not to be included as overtime.

(b) Firemen—on Donkey Watches: Shall keep steam. Shall do no cleaning or boiler work; however, he shall clean up excess oil occasioned by changing burners. After 5 P.M. and before 8 A.M., when no cargo is being worked, they may be required to look after auxiliaries in engine room.

At all times steam shall be got up by members of the MFOW&W only, and no licensed engineer shall be asked or ordered to tend fires on any ship's boilers. This provision shall also apply to vessels in home ports.

(c) Oilers: Shall oil main engine and auxiliaries; tend water when gauges are in engine room and no watertender is carried. He shall pump bilges, oil ice machine and stearing gear; shall do no cleaning while on sea watches, except to mop up floor plates in front of main engine before going off watch. He shall work any eight (8) hours in twenty-four (24) hours.

(d) Watertenders: Shall tend water; watch oil pressure and condition of fires; keep check on fuel service tanks; watch blowers, stack draft and oil temperatures. When sea watches are broken, they shall do mechanical repairs in fire room, and on boiler mountings and feed pumps, between the hours of 8 A.M. and 5 P.M. When steam is in on more than two boilers, a watertender shall be on watch

(Testimony of Paul St. Sure.)

Respondent's Exhibit RB—(Continued)

with the fireman and receive the same overtime consideration when cargo is being worked.

(e) Utility Men: Shall do general cleaning, painting and polishing in engine department. They shall take on stores; hook up water and fuel oil hoses; work from 8 A.M. to noon, 1 P.M. to 5 P.M. week days; and 8 A.M. to noon Saturday. They shall be required to blow tubes by hand. When the job is finished, they shall knock off for the day to clean clothes. They shall do inside boiler work on minor jobs not warranting the hiring of gangs of scalers providing overtime is paid. On no account shall they be required to clean out the quarters of Orientals.

They may be assigned ashore as firemen or oilers, or helpers to machinists, electricians, pipefitters, tinsmiths and bricklayer. They may also be assigned to clean winter layup oil off machinery.

(f) Combination men (Kanak) shall combine the duties of firemen and oilers. They shall not do any wiping or station work, but shall be required to leave safe working conditions for their relief.

(g) Chilkat and Madrono: Oiler in Alaska will work eight hours between 8 A.M. and 5 P.M. with one hour for noon meal, or two four-hour watches with eight hours off duty, dependent on tides. Work on Saturday afternoons, Sundays and Holidays while engaged in cannery operations comes within definition of "In Port".

Kanak and Kvichak:—Combination men and

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

oilers in Alaska may be required to work watches of 4 and 8 off, or 8 on and 16 off, by arrangement between the delegates and the chief engineer.

In either case, work on Saturday afternoons, Sundays and Holidays while in Bristol Bay, comes within definition of "In Port".

Sannak and Fram. There shall be one fireman on the "Sannak" and "Fram." In lieu of all overtime from time of leaving until returning to San Francisco, they shall each receive One Dollar and Twenty-five Cents ($1.25) per thousands cases packed on the "Sannak", and $2.50 per thousand cases on the "Fram."

(h) Unlicensed Junior—Etolin:—Hours: 8 A.M. to noon, 1 P.M. to 5 P.M. weekdays; 8 A.M. to noon Saturdays.

Shall perform maintenance work in engine department, and assist the engineers in repair work in engine department. He shall not be required to do any cleaning of boilers, cleaning paint, polishing, wire brushing, shipping or scaling.

Section 28. (a) Where ships crews are sent ashore to fire boilers, they shall be kept on the job until the ship sails or the boilers are blown down. This clause shall not be deemed to apply if man is incompetent or drunk, in which case another member of the crew shall be assigned in his place.

(b) Men assigned as firemen in canneries shall work in three watches of eight hours each, and do only firemans duty.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

(c) Other men going ashore may be assigned to jobs attending any machinery driven by steam or oil. They shall assist in maintenance, overhauling and repair work and act as helpers. However, under no conditions shall they be required to work in fish tanks or hoppers, or gut or clean fish, or clean fish tanks or conveyors, or any excessively dirty work. The outside painting of fuel tanks or machinery shall be regarded as within their regular duty.

Men assigned as cannery watchmen shall be assigned as watchmen every night on a straight eight-hour watch between the hours of 6 P.M. and 6 A.M.

(d) If the men do not stand watches they may be worked any eight hours out of nine consecutive hours from Midnight till Midnight. But they must have 16 hours rest between eight hours worked or overtime be paid.

(e) If men are put to work outside in bad wet weather they should be furnished with Boots and Oil Skins.

Section 29. (a) The standby men shall be required to do regular standby work as covered by the jurisdiction of the Firemen's Union, as follows: Cleaning, chipping and painting of quarters; cleaning, chipping and painting in engine room and fire room; cleaning of condensers and hot wells; assisting engineers in maintenance work; work on boilers shall be limited to washing out waterside, assisting to overhaul valves, cleaning tube plates for water

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

tube boilers, replacing gaskets and assisting on brick work.

(b) Standby men shall be governed by the standard prevailing practice in past years, and ship on the vessel to which they are assigned by the port engineer.

(c) During such period, clauses dealing with room and meal allowances shall not apply.

(d) During such periods, any man using spray guns or chipping with air hammers shall be paid One Dollar per day extra.

Cannery Firemen for Larsen's Bay and Chignik

Section 30. (a) On the first voyage of the Chirikoff there shall be hired four cannery firemen for Larsen's Bay and three cannery firemen for Chignik.

(b) Cannery firemen shall be divided into three watches of eight hours each in Alaska. The fourth fireman for Larsen's Bay, previous to operating season, shall assist in overhauling work on by-products plant or main cannery.

(c) When assigned to by-products plant during the canning season, he shall stand an eight-hour watch between the hours of 8 A.M. and 5 P.M.

(d) Fireman for by-products plant shall be required to bring up steam on his own boiler, and shut down when day's work is finished.

(e) If emergency requires, these men shall be required to work in the engine room department of the vessel on the voyage to Alaska.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 31. The wage and working conditions of the Agreement shall not apply to the bricklayer-utilityman and his helper, whose wages shall be as follows:

Bricklayer-Utilityman	$165.00 Per Month
Helper	145.00 Per Month

Section 32.

Overtime Rate	$1.10 Per Hour
Overtime Rate for Helper	1.00 Per Hour

Section 33. Hours:—Eight between 8 A.M. and 5 P.M. weekdays, four on Saturdays from 8 A.M. to noon.

Section 34. Duties:—Take care of brickwork, covering pipe, concrete work, etc., at the following canneries: NN and M at Naknek, Ugashik, Egegik, and Koggiung.

Section 35. When bricklayer is employed on standby he shall receive the usual rate of pay while doing brickwork. When not engaged in this work, he may be assigned with the regular MFOW&W standby crew at $140.00 per month.

Section 36. The Company agrees to recognize the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association as the representative for collective bargaining of all unlicensed engineroom personnel on vessels owned, operated or chartered by the Company, in the Alaska Cannery Trade; and firemen, oilers and watertenders employed in the Company's cannery operations in the Bristol Bay Area.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 37. All such personnel shall be members in good standing with the Union, and must be hired directly from the offices of the Union.

Section 38. The Union agrees to furnish experienced, capable and competent men for the jobs called for.

Section 39. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its re-negotiation.

Section 40. There shall be no obligation on the part of the Company to continue any employment hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

PACIFIC COAST MARINE FIREMEN, OILERS, WATERTENDERS AND WIPERS' ASSOCIATION

ALASKA SALMON INDUSTRY, INC.

By ----------

For:

ALASKA PACKERS ASSOCIATION

RED SALMON CANNING CO.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Steam and Diesel Agreement

This Agreement entered into this ..... day of May, 1940, between Alaska Salmon Industry, Inc. (for Alaska Packers Association and Red Salmon Canning Co., herein referred to as the Company), and Marine Engineers Beneficial Association No. 97, Inc. (herein referred to as the Union),

Witnesseth:

Whereas, the Union has been recognized by the Company as the representative of their licensed employees in the Engine Room Department of their respective vessels for collective bargaining, and the parties hereto have carried on collective bargaining for the purpose of making an agreement fixing hours, wages and working conditions,

Now, Therefore, the parties hereto agree as follows:

Section 1. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its renegotiation.

Section 2. All disputes relating to this agreement or its interpretation shall be determined by a Licensed Personnel Board, consisting of two persons appointed by the Union and two persons ap-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

pointed by the Company. The parties shall submit any such disputes to decision by such board and they agree to be bound by such decision. In the event that said board shall not agree, an additional member shall be appointed by them whose decision shall be final. In the event the two parties cannot agree upon the selection of the fifth member within ten days, the Director of the San Francisco Regional Labor Board shall be requested to select said fifth member. Upon written notice from any party hereto, stating the purpose of the meeting, the Board shall meet within twenty-four hours. However, no licensed engine room officer shall be required to work under conditions which are inimical to his personal safety or health. No licensed engine room officer shall be required to work within, or pass through, picket lines established by any recognized labor union whose members are employed by the Company. The refusal of any licensed engine room officer to work under the conditions described in this section shall not be considered a violation of this agreement.

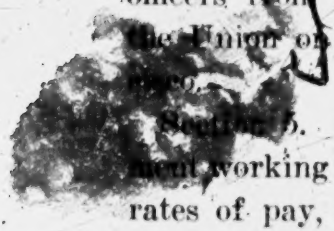
Section 3. Authorized representatives of the Union shall have the right to go on board ships of the Company at all reasonable times, at all ports, for the purpose of consulting with engine-room officers employed thereon.

Section 4. The Union agrees to aid the Company in every way to maintain the highest possible caliber of licensed personnel employed in the En-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

gine Room Department on all the vessels covered by this agreement. Preference of employment shall be given members of the Union in filling vacancies when available, provided they are qualified to fill such positions. All licensed engine room officers must be members of the Union in good standing. The Employer shall select his licensed engine room officers from the list of unemployed members of the Union on file at the local office in San Francisco.



Section 5. Any engineer covered by this agreement working in more than one capacity at different rates of pay, shall receive the higher rate of pay during the period of employment under this agreement. This shall not apply to any employee relieving any employee for ten (10) days or less.

Section 6. When vessels are in any port and meals are not furnished, $3.00 per day shall be allowed for such. If rooms are not in proper condition to be occupied, such as beds not made up, heat and lights not furnished, etc., $2.00 per night shall be allowed for such. The second sentence of this section shall not apply when transferred to power scows, tugboats or launch, but clean linen must be furnished weekly. It is understood and agreed that written notice will be given to the Captain before any penalty in this section shall apply so that the Captain will have time to correct the situation without penalty.

Section 7. When in port or at an anchorage, the

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

following days shall be recognized as legal holidays; All Sundays, Saturday afternoons, New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Armistice Day, Thanksgiving Day, Christmas Day. In the event that any of these holidays fall on a Sunday, the following Monday shall be observed.

Section 8. If service is satisfactory to the employer, the Chief Engineer of the fololwing vessels, the "Etolin", "Bering", "Chirikof", "Delarof", and "American Star", will be employed on a year round basis, at the monthly rate of $250.00 per month; for the M. S. "Kvichak", the same year round employment shall prevail at the monthly rate of $220.00 and for the M. S. Madrono the same year round employment at the monthly rate of $200.00. In the event the Chief Engineer's services prove unsatisfactory, then during his term at sea, full offshore pay of

$310.00 per month for the "Etolin"
300.00 per month for the "Bering"
300.00 per month for the "Chirikof"
300.00 per month for the "Delarof"
300.00 per month for the "American Star"
270.00 per month for the M. S. "Kvichak"

will apply in lieu of the year rate of $250.00 for the steamers above mentioned, $220.00 for the M. S. "Kvichak" and $200.00 for the M. S. Madrono per month. In the event of any vacancy occuring with the Chief Engineers' position, the employer

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

agrees to fill such vacancy as soon as practical by a member of the Union.

Should the Chief Engineer of the "Madrono" be laid-off at any time after the Season he will be paid $200.00 extra to adjust for a higher seasonal basis. It is clearly understood that the Chief Engineer on the "Madrono" is not necessarily an all year-round position.

The above Chief Engineers shall be granted a vacation consisting of two consecutive weeks with full pay.

The work week for Chief Engineers in winter quarters shall consist of five days at eight hours per day.

Section 9. While in winter quarters it shall be optional with the company to employ licensed engineers at either of the following rates:

1. At the prevailing rate paid machinists of $1.12½ per hour.
2. At the monthly rate of $180.00, such rate to be based on a five day week, eight hours per day. (Two weeks vacation shall be granted if annually employed.)
3. When engineers are engaged to assist engineers in repair or maintenance work, they shall be paid at the rate of $35.00 per week. The regular work week shall consist of five days, Monday to Friday inclusive.

Section 10. Within thirty days after signing off of articles, the employer shall supply the Asso-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

ciation with a list of names of its members they do not wish to rehire.

However, engineers must report in person or in writing to employer not earlier than two months and not later than one month prior to sailing, stating that they will or will not return.

Wages

Section 11. When ships are in commission, the licensed engine room officers employed by the Alaska Packers' Association on the vessels as herein designated shall be paid not less than the following monthly salaries, with subsistance, quarters, bedding, weekly change of linen, maintenance and cure:

Vessel	Chief Engineer	1st Asst. Engineer	2nd Asst. Engineer	3rd Asst. Engineer	4th Asst. Engineer
SS Etolin	$250.00	$220.00	$200.00	$185.00	$170.00
SS Bering	250.00	220.00	200.00	185.00	
SS Chirikof	250.00	220.00	200.00	185.00	
SS Delarof	250.00	220.00	200.00	185.00	
SS American Star	250.00	220.00	200.00	185.00	
SS Kanak	225.00	180.00	160.00		
MS Kvichak	220.00	205.00	185.00	170.00	
MS Madrono	200.00	195.00	170.00		
MS Chilkat	215.00	180.00	160.00		
MS Alitak	215.00	180.00	160.00		

Section 12. Hours of Labor at Sea. (a) Watch Officers: Four hours shall constitute a watch and two watches shall constitute a day's work.

(b) Non-watch Officers: Eight (8) hours from 8 A.M. to 5 P.M. shall constitute a day's work for non-watch officers at sea, provided, however, that

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

if it develops that a non-watch officer must work outside of these hours, he may do so, providing he shall not work more than eight (8) hours out of twenty-four (24) hours reckoned from midnight to midnight.

(c) All work done at sea by assistant engineers in excess of eight (8) hours a day as defined in this section, except that necessary for the safety of the passengers, crew, vessel or propulsion machinery or their auxiliaries or cargo, shall constitute overtime.

(d) At sea, no work shall be performed on Saturday afternoons, Sundays or Holidays except that necessary for the navigation and safety of the vessel, provided that all licensed engineers shall stand their respective watches as required by law.

Section 13. Hours of Labor in Port. (a) In home ports, when watches are broken, the working day shall consist of eight (8) hours between 8 A.M. and 5 P.M., and all work performed in the home port after 5 P.M. and before 8 A.M. shall constitute overtime.

(b) In all other ports when watches are broken and it is necessary for engineers to stand night watches two engineers shall maintain the watches, which shall be equally divided between 5 P.M. and 8 A.M., without the payment of overtime, for the purpose of supervising and operating the machinery necessary to keep the plant in operation, but any work performed on such night watches other

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

than that necessary for the safety of the passengers, crew, vessel or its equipment or cargo shall constitute overtime. The remaining engineer may be assigned as mutually agreed between the two parties. If assigned to day work on the ship the work day for engineers so assigned shall be eight hours between 8 A.M. and 5 P.M. All work performed by engineers assigned to day work after 5 P.M. and before 8 A.M. shall constitute overtime.

Section 14. The regular rate of overtime for licensed engine room officers shall be $1.25 per hour.

For such work no less than one hour shall be paid. For all work exceeding one hour, straight time shall be paid at the regular overtime rate.

Section 15. When overtime work is performed, the officer performing same shall prepare in duplicate an overtime slip immediately after the work is completed and shall have same certified by the officer ordering the work to be done, and if at the cannery by the Superintendent or cannery Foreman.

The officer shall present Chief Engineer, Superintendent or Cannery Foreman with one of the duplicate copies even if not certified; disputes relating to this section shall be determined as provided for in Section 2.

Section 16. On vessel where the Chief Engineer is required to stand a regular sea watch, the Chief

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Engineer shall be entitled to the same working conditions regarding overtime as an Assistant Engineer.

Section 17. No Chief Engineer shall do work which will prevent Assistant Engineers from receiving overtime pay.

Section 18. When fuel is being transferred for other Companies from which revenue is being derived, watch engineers shall be paid at the regular overtime rate.

Section 19. While at the fishing stations, work hours on tugboats, S. S. "Kanak", M. S. "Chilkat" and M. S. "Alitak", shall consist of eight (8) hours out of twenty-four reckoned from midnight to midnight, Saturdays, and Sundays excluded, but from Friday midnight to Saturday noon, four hours shall constitute one day's work.

Section 20. Work hours of engineers assigned to maintenance in cannery shall be be between the hours of 8 A.M. to 12 noon, and from 1 P.M. to 5 P.M. on week days; work hours on Saturdays shall be from 8 A.M. to 12 noon. Work hours of engineers assigned to maintenance work on launches shall be 8 hours in 24 reckoned from midnight to midnight. Engineers transferred to cannery shall be quartered in rooms not having more than two beds if possible. Engineers shall not share room with any other but an engineer.

Section 21. All work performed by Engineers while working ashore assigned to maintenance in

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

cannery or over launches on Saturday afternoons, Sundays, or holidays shall be paid for at the regular overtime rate. This not to apply to Engineers assigned to launches working on percentage.

Section 22. Chief Engineers shall be employed or discharged by the owners or Superintendent Engineer. Assistant Engineers shall be selected by the Chief Engineer, subject to the approval of the owner or Superintendent Engineer. The Chief Engineers shall only be discharged by the same authorities. When assigned to shore duty, engineer shall carry out the orders of the Superintendent or Company's agent.

Section 23. Wherever Union members were employed in the past operating stationary power plants, such members shall continue to operate same.

Section 24. No unlicensed engine room personnel off watch shall be permitted to open valves in engine room; such duties shall be performed by the Engineer on watch or at his order only, issued to the unlicensed crew on watch.

Working Conditions

Section 25. Sea watches shall be set at midnight preceding sailing day and shall be broken at noon on day of arrival.

Section 26. For the safety of passengers, crew, vessel or her equipment or cargo, an Engineer on watch while vessel is being navigated shall not

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

be permitted to do work that takes him away from engine room or fire room.

Section 27. While in Alaska, no less than two engineers must be kept while loading and discharging. If refrigerating plant is used between discharging and loading, two engineers must remain aboard. This does not apply to M. S. Madrono.

Section 28. Under no condition shall a Chief or Assistant Engineer remain alone aboard ship—at least one Fireman or Oiler must remain aboard. This does not apply to M. S. Madrono.

Section 29. Under no condition shall a Chief Engineer or Assistant Engineer do his own cooking aboard ship. A cook must be retained.

Section 30. In the home port after leaving winter quarters two night engineers shall be employed. They shall be paid at the rate of $8.00 per night. No overtime to be paid night engineers when cargo is worked. This does not apply to M. S. "Kvichak" and M. S. "Madrono".

Section 31. Unless a separate officers' mess is provided for their use, all engineers shall be permitted to take their meals in the regular ship's saloon.

Section 32. A chair must be assigned to each engineer in the dining saloon.

Section 33. While ashore, all engineers' meals shall be served in the officers' mess room.

Section 34. Should Chief Engineer be assigned to shore duty while at the fishing stations, As-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

sistant Engineer responsible and in charge shall be paid Chief Engineers' scale during the absence of Chief Engineer.

Section 35. While ship is at anchorage at Winter Quarters, power transportation must be furnished to and from the ship. (Boat must have inboard power and must be of sufficient sturdiness to withstand winter storms in bay.)

Section 36. For the purpose of this agreement, the home port shall be considered the port where the company's offices and terminals are located and articles are signed and terminated.

Section 37. A full complement of licensed engine-room officers shall be employed at all times when vessels enter commission, at the beginning of the season, until ship returns to winter quarters.

The time when ship enters commission shall be defined as such time when stevedores are first used after the vessel has departed from winter quarters, destined for any loading terminal or San Francisco or for direct departure to Alaska.

While the ship is loading or discharging between the Spring and Summer trips, and between the Summer and Fall trips, licensed engineers shall be retained.

If at winter quarters, the winter quarters scale shall prevail.

Section 38. If employer sees fit, engineers who have been in the employment of the company during the past season shall be given preference of

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

employment and promoted when opportunity presents itself. At the employer's option, engineers shall have the privilege of going back on the jobs on which they served last, provided former employee is in good standing in the Union.

Section 39. A member laid up through sickness or accident resulting from his employment, who is unable to work in the judgment of a physician, shall be paid all earnings up to date so laid up, and thereafter be paid his monthly wages, transportation and subsistence until placed in a hospital in San Francisco or Seattle.

Section 40. A complete and certified medicine chest must be kept aboard at all times when ship is in commission. All members while engaged under this agreement shall receive free medical and surgical attendance, excepting venerial diseases.

Section 41. All claims pertaining to rate of pay, overtime, meals or lodgings, must be filed with company within thirty days after termination of the articles.

Section 42. The Union agrees to furnish competent men within the employments covered by this agreement.

Section 43. There shall be no obligation on the part of the Company to continue any employment hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

In Witness Whereof the parties hereto have set their hands and seals this ..... day of ....., 1940.

ALASKA SALMON INDUSTRY, INC.

By .....

For: ALASKA PACKERS ASSOCIATION
RED SALMON CANNING CO.

MARINE ENGINEERS' BENEFICIAL ASSOCIATION No. 97, Inc.

By .....

MARINE ENGINEERS' BENEFICIAL ASSOCIATION NO. 97, INC. GAS OPERATORS AGREEMENT

This agreement entered into this ..... day of May, 1940, between Alaska Salmon Industry, Inc. (for Alaska Packers Association and Red Salmon Canning Co., herein referred to as the Company), and Marine Engineers Beneficial Association No. 97, Inc. (herein referred to as the Union),

Witnesseth:

Whereas, the Union has been recognized by the Company as the representative of their licensed employees in the Engine Room Department of their respective vessels for collective bargaining, and the parties hereto have carried on collective bargaining

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

for the purpose of making an agreement fixing hours, wages and working conditions,

Now, Therefore, the parties hereto agree as follows:

Section 1. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its re-negotiation.

Section 2. All disputes relating to this agreement or its interpretation shall be determined by a Licensed Personnel Board, consisting of two persons appointed by the Union and two persons appointed by the Company. The parties shall submit any such dispute to decision by such board and they agree to be bound by such decision. In the event that said board shall not agree, an additional member shall be appointed by them whose decision shall be final. In the event the two parties cannot agree upon the selection of the fifth member within ten days, the Director of the San Francisco Regional Labor Board shall be requested to select said fifth member. Upon a written notice from any party hereto, stating the purpose of the meeting, the Board shall meet within twenty-four hours. However, no licensed engine-room officer shall be required to work under conditions which are in-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

imical to his personal safety or health. No licensed engine-room officer shall be required to work within, or pass through, picket lines established by any recognized labor union whose members are employed by the Company. The refusal of any licensed engine-room officer to work under the conditions described in this section shall not be considered a violation of this agreement.

Section 3. Authorized representatives of the union shall have the right to go on board ships of the Company at all reasonable times, at all ports, for the purpose of consulting with engine room officers employed thereon.

Section 4. The Union agrees to aid the Company in every way to maintain the highest possible caliber of licensed personnel employed in the engine room department on all the vessels covered by this agreement. Preference of employment shall be given members of the Union in filling vacancies when available provided they are qualified to fill such positions. All Marine Engineers or Operators must be members of the Union in good standing. The Company shall select its licensed engine room officers from the list of unemployed members of the Union on file at the local office in San Francisco.

Section 5. Any engineer or operator covered by this agreement working in more than one capacity at different rates of pay, shall receive the higher rate of pay during the period of employment under

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

this agreement. This shall not apply to any employee relieving any employee for ten days or less.

Section 6. When vessels used in transporting men to Alaska are in any port and meals are not furnished, $3.00 per day shall be allowed for such. If rooms are not in proper condition to be occupied, $2.00 per night shall be allowed for such. It is understood and agreed that written notice will be given to the Captain before any penalty in this section shall apply so that the Captain will have time to correct the situation without penalty.

(a) Jurisdiction is hereby claimed by the Union over all engineers and/or operators on all tug boats and launches regardless whether or not they have pilot house control, except where the vessel is controlled by signal or bell system from pilot house, when in such case an engineer or operator shall be in charge in the engine room.

Section 7. When the vessels are in commission, the engineers and/or operators employed on dispatch launches and tug boats employed by Company on vessels as herein designated shall be paid not less than the following monthly salaries with subsistence, quarters, bedding, soap, matches, change of linen every week, maintenance and care. In the event the linen, towels, soap is not issued after written notice is served on proper authority on the seventh day of each week, a penalty of One Dollar ($1.00) per day shall prevail until same is

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

received unless due to cause beyond control of the Company. Sufficient blankets shall be furnished each man.

	Horse Power	Wages
Dispatch boats and tugs	10 to 35 H. P.	$150.00 per mo.
Tugs and power barges	36 to 100 H. P.	160.00 " "
Tugs and power barges	101 to 150 H. P.	170.00 " "
Tugs and power barges	151 H.P. and up	180.00 " "
Dispatch boats "Loon" "Peregrin" and "Plover"		160.00 " "

A Ten Dollar ($10.00) increase per month shall be paid over scale to engineers or operators employed on twin screw tugs or power barges.

Ten Dollars ($10.00) extra per month shall be paid over the scale to engineers or operators on tugs, or power barges with pilot house control.

Section 8. In lieu of all overtime, except as hereinafter provided, the engineers and/or operators shall receive the appropriate percentage on the pack as follows:

For 8 line cannery	$1.25 per M cases
For 7 line cannery	$1.43 " "
For 4 line cannery	$2.50 " "
For 2 line cannery	$5.00 " "
For 1 line cannery	$10.00 " "

Engineers and/or operators shall tally fish when required without payment of overtime.

Section 9. (a) Prior to time tugs, launches, dispatch launches, and power scows are put in commission when operator or engineer is engaged in repair or maintenance work, working hours shall

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

be eight (8) hours in twenty-four (24) hours reckoned from midnight to midnight. Operators shall assist in all repairs on their own boats, but this shall not apply to machine shop work.

When an operator works other than repairing, operating or maintaining dispatch boats, tugs, launches, or power scows, that work shall be classified as overtime. This shall not apply to tallying fish. Overtime rate $1.25 per hour.

(b) The engineer or launch operator shall be furnished with an official log book. A complete log shall be kept by the operator or engineer of each day's work, in duplicate form. The original copy to be turned in to the official timekeeper and the carbon copy to be retained by engineer or operator. In the event of a dispute the time keeper will refer the matter to the delegate. In the event a satisfactory agreement cannot be reached the dispute will be referred to Section 2, page 1 of this agreement.

(c) All tug and launch boat operators and engineers pertaining to this agreement, their wages shall start seventy-two (72) hours from time of dispatching ship, providing, however, no picket line shall delay the vessels sailing, or cause beyond companies control. Time and date of ships sailing to be noted on Union dispatch card by company agent and signed. In the event ship sails before seventy-two (72) hours elapsed, wages shall start at said sailing date.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

(d) Any member laid up through sickness or accident, resulting from employment or environment who is unable to work according to the judgment of a physician, shall be paid all earnings up to the time so laid up, and thereafter be paid his monthly wages, transportation and subsistence, until placed in a hospital in Seattle or San Francisco.

All members while engaged under this agreement shall receive medical and surgical attendance, and medical and surgical necessities on the vessel, excepting venereal diseases.

(e) Each launch shall be furnished with provisions to last at least one week, and when cooks are not provided, an engineer or operator who does his own cooking, shall be compensated at the rate of $.65 per meal. Dispatch launches shall not be considered as coming under this section.

(f) Launch, dispatch and tug boat operators enroute to and from the fishing grounds shall be quartered two (2) to a stateroom if possible. The rooms are to be serviced once a day, and clean linen is to be supplied once a week. They shall be served meals in the officers mess, and also be served in the officers mess at the canneries. At the canneries when the operators live ashore, they are to be quartered two (2) to a room if possible.

(g) If employer sees fit, engineers, launch and tug board operators who have been in the employment of the Company during the last season shall be given preference of employment and promoted

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

when opportunity presents itself. At employer's option, engineers will have the privilege of going back to jobs on which they served last, provided former employee is in good standing in the Union.

(h) If arrival of any ship in the home port is after 12 o'clock midnight, a full day's pay shall be given.

Section 10. For the purpose of this agreement the home port shall be considered the port where the company's office and terminals are located and articles are signed and terminated.

Section 11. The Union agrees to furnish competent men within the employments covered by this agreement.

Section 12. There shall be no obligation on the part of the Company to continue any employment hereunder in the event any expedition is aabndoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

In Witness Whereof, the parties hereto have set their hands and seals this ..... day of May, 1940.

MARINE ENGINEERS' BENEFICIAL ASSOCIATION NO. 97, INC.

By .....

ALASKA SALMON INDUSTRY, INC.

By .....

For Alaska Packers Association

Red Salmon Canning Co.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

MARINE COOKS & STEWARDS
SEASON 1940

This Agreement entered into this ..... day of May, 1940, between Alaska Salmon Industry, Inc. (for Alaska Packers Association and Red Salmon Canning Co., herein referred to as the Company), and Marine Cooks and Stewards (herein referred to as the Union),

Witnesseth:

The Union claims jurisdiction in the preparation and serving of food to all crafts, except cannery workers, on all floating equipment and at all canneries, provided that men at pumping stations and on boats and small power scows who have prepared and served their own food in the past may continue to do so. The Company agrees to recognize the Union as representing all members of the Stewards department from the day of hiring at San Francisco until the day of discharge at San Francisco.

The Company agrees to hire all members of the Stewards department through the hiring hall of the Union, and the men shall except as otherwise herein provided be assigned to their specific jobs from the Union hiring hall.

Section 1. It is expressly agreed that neither the Company, Superintendents, nor any agent of the Company, nor any representative of the Union has the power or authority to change any of the provisions of this agreement.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 2. The Union in all cases shall judge and determine the qualifications of its members, provided that the Company shall not be required to employ unsatisfactory men or men who have quit during previous seasons while in Alaska, and provided further that Chief Stewards and Storekeepers, when employed, may be selected by the Company and shall not be subject to assignment from the Union Hiring Hall.

Section 3. Any member signed up and discharged without valid cause shall be paid one month's salary within 24 hours. The Union and the Company shall jointly determine what constitutes valid cause, and if no agreement is reached, shall be submitted for adjustment or arbitration.

Section 4. No member shall be required to pass through a picket line established by organized labor, nor work where armed guards are used or employed during a dispute; refusal to pass such picket line shall not constitute a violation of this agreement.

Section 5. San Francisco prices shall prevail in the Company Commissaries and cigarettes shall not be sold at more than one dollar and forty cents per carton.

Section 6. Members signing on for one cannery or ship shall not be transferred without the consent of the membership.

Section 7. Standby wages shall be paid at the rate of $6.50 per day for all men.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 8. The Union is opposed to gambling in any form and the sale and use of dope and the excessive use of intoxicating liquors. Stewards and Delegates will cooperate with the Company in preventing these vices.

Section 9. A committee from the Union shall investigate all ships at least five (5) days prior to sailing and to see that proper working gear is supplied and quarters satisfactorily arranged.

Section 9 (a) Where accommodations will allow in present bunkhouses, spring cots will be installed in place of bunks two high.

Section 10. On board ships and ashore in the canneries, no member shall be required to work or sleep where conditions are such as to be inimical to his health or well-being.

Section 11. The Company agrees to furnish comfortable sleeping quarters ashore including recreation room and adequate bathing and sanitary facilities for the exclusive use of the Stewards department. Where same are not now available they will be provided as soon as possible after arrival.

All windows and doors shall have full screens.

Section 12. When ashore, except in event of conditions beyond control, when heat is not furnished, bathing facilities, or proper lighting are lacking, a penalty of one dollar ($1.00) per day per man shall be imposed until such conditions are properly adjusted. At canneries generators will run until

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

11 P.M. so that lighting will be available until this hour.

Section 13. Where men are sent ashore in Barges, proper shelter shall be provided for all men and their belongings, with sufficient life-preservers for all men on the Barge. Traveling time to and from Cannery and ship shall be considered working time. If members miss a meal while traveling between ship and shore, they shall be paid for such at the agreed rate. Members other than Barge or Lighter Crews shall not be required to travel on same when heavy machinery is being transported. Neither the M. S. Madrono nor the M. S. Kvighak shall be considered as Barges within the meaning of this section.

Section 13a. The Company agrees to send wires to all locations notifying the winte men to have kitchens and living quarters in livable and sanitary condition for crew to come ashore. Copies of telegrams to be furnished to the Union.

Section 14. Sufficient Steward's working equipment, such as mops and mop buckets with wringers, brooms, dust pans, etc., shall be provided for ship and cannery use.

Section 15. A sanitary man is to be employed for each cannery except at Ugashik to keep toilets and bathing facilities clean in all canneries and on board ships, and to remove garbage from cookhouse to dumping grounds. He shall keep grounds clean around the kitchen and mess rooms, and shall

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

carry coal for kitchen or bunkhouse use, and shall take care of live chickens if taken. The sanitary man shall also make beds and assist janitor if required.

Section 16. Janitors shall be provided to keep stewards' quarters clean (and in all other departments entitled to such service) and shall keep bathing and sanitary facilities in bunkhouses clean and shall make beds. A janitor shall not be required at Ugashik.

Section 17. At no time shall members be required to do any work which rightly belongs to another organized group.

Section 18. Except at Ugashik, no messman shall operate a laundry in addition to his regular work.

Section 19. The Company shall furnish each man with a bedspring, mattress, and pillow, also a white slip and two white sheets to be changed every seven (7) days, and face and bath towels to be furnished twice a week. A spread and two good blankets shall be furnished each man, who will be responsible for same. When linen is not provided on the seventh day, the Delegate shall notify the Chief Steward to this effect and if no change is made on the following day a penalty of one ($1.00) dollar per man per day will be charged. Face soap of good quality, preferably Palmolive, matches, and laundry soap shall be furnished weekly also.

Section 20. Where Laundryman washes for more

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

than one (1) Cannery, he shall be allowed an Assistant Laundryman.

Section 21. Waiters' coats, aprons and Cooks Butchers' and Bakers working gear, and dish towels shall be washed by the Company Laundry without charge.

Section 21a. Waterproof aprons shall be provided for dishwashers and scullions.

Section 22. The Company shall furnish daily radio dispatches, including uncensored and undiluted labor news, provided that there shall be no obligation to furnish such dispatches or news if to do so requires payment of overtime to any of Company's employees. Victrolas with records shall be placed in recreation rooms.

Section 23. Sufficient members of the different crafts shall be hired at least five days in advance to get ships in condition and see that stores and meat are properly stowed. This does not include tugboats, or M. S. Madrono or Kvighak.

Section 24. A Chief Steward shall be carried on the Etolin, Chirikof and American Star, who shall serve in the same capacity ashore.

Section 25. In all Canneries of four lines or over a storekeeper shall be carried to handle all Steward's stores from warehouse to cookhouse. No Member will be required to handle stores either on or off ship except petty stores, handled by Launch Cooks. In addition to his other duties he shall clean the hams and bacons, and sprout potatoes and onions.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Where storekeeper is not required, scullion shall carry stores to cookhouse. The storekeeper shall carry launch stores to the dock as required, without payment of overtime.

Section 26. Employees shall prepare, serve and clean up after three (3) meals each day, and prepare, serve and clean up after coffee as customary during the day at straight time.

In lieu of overtime for this work men shall be paid the sum of $150.00 each with the exception of those working while in Alaska, on launches, tugs, bunkscows and power scows.

Saturday afternoon, Sunday and Holiday work will be paid for at double the regular straight time wage except to men working on percentage but this does not include Saturday afternoons and Sundays at sea.

Three Dollars ($3.00) will be paid to those day men actually engaged in preparing, serving and cleaning up after hot night meals and $1.50 to those day men actually engaged in preparing, serving and cleaning up after night cold lunches or coffee or both. The Steward shall designate the number of men to be employed.

Section 27. Men working while in Alaska on launches, tugs, power scows and bunkscows will do work before and after such transfer as directed by Steward from time of leaving San Francisco until return without payment of overtime.

Section 28. Men working on launches, tugs,

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

power scows and bunkscows to receive in lieu of overtime, except as provided in Section 29 percentage on the total pack of cannery or canneries to which assigned, as follows:

Eight lines	$1.25 per thousand cases
Seven lines	1.43 per thousand cases
Four lines	2.50 per thousand cases
Two lines	5.00 per thousand cases
One line	10.00 per thousand cases

Section 29. Men working on launches, tugs and power scows will prepare, serve and clean up after three meals and coffee as customary each day and set out cold cuts and coffee before going off duty without payment of overtime.

Hot night lunches are not to be served unless ordered and by written approval of Captain. Three dollars ($3.00) to be paid for night hot lunches.

Launch, power scow and tug cooks to carry their own stores as directed without payment of overtime.

Section 30. Bunk scow men where there are two shifts shall work on day shift from 6 A.M. to 6 P.M. and on night shift from 6 P.M. to 6 A.M. without payment of overtime.

Bunk scow men where there is one shift shall receive $25.00 each extra for the season.

Section 31. Power scow or launch cooks if designated to feed fishermen shall receive $25.00 extra for the season.

Section 32. Laundrymen, janitors, sanitary men and storekeepers, where employed shall receive

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

$150.00 in lieu of overtime except as provided in Section 35.

Section 33. Night men to work from 7.50 P.M. to 1 A.M. and from 3:30 A.M. to 6 A.M. Night men shall receive $150.00 extra for the season and overtime as provided in Section 35. Night cooks where no night messman is employed shall serve midnight lunch to firemen and watchmen.

Section 34. Bakers to do all work necessary and their hours of work shall be left to the discretion of the Chief Baker. Bakers shall receive $150.00 extra for the season in lieu of overtime except as provided in Section 35.

Section 35. Saturday afternoon, Sunday and Holiday work will be paid for at double the regular straight time wage to men covered in Sections 32, 33 and 34 but this does not include Saturday afternoons and Sundays at sea.

Section 36. Sums paid in lieu of overtime, or as a bonus, or as percentage as provided herein shall be paid on a pro rata basis in the event men assigned to jobs to be compensated on these bases are so assigned and at work during portion of season only, and in no event shall both overtime and a bonus or percentage be paid for the same period of employment.

Section 37. On vessels and tugs en route to and from Alaska the meal hours shall be as follows:

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Breakfast	7.30 a.m. to 8.30 a.m.
Dinner	11:30 a.m. to 12:30 p.m.
Supper	5.00 p.m. to 6:00 p.m.

The meal hours at the canneries and on vessels and floating equipment while in Alaska shall be as follows:

Breakfast	7.30 a.m. to 8.30 a.m.
Dinner	12:00 noon to 1:00 p.m.
Supper	5.00 p.m. to 6:00 p.m.

The Company shall require that meal hours be observed, and that if any meals are required to be served to any person (except members of the Steward's department) who arrives for meals after the hours above set forth, overtime will be paid for time actually engaged in serving and clearing up after such person. Such person shall be served, however, only upon written authority from the Superintendent or his authorized agent.

Section 38. When food and lodging is not available, meal and lodging money shall be paid as follows:

Breakfast	$1.00
Lunch	1.00
Dinner	1.00
Room rent	2.00

Section 39. The Company agrees to recognize the Union Delegate on board ships and in Canneries.

Section 39 (a). Any overtime claims shall be acknowledged in writing by the Company representatives in charge, whether on vessels or tugs in the can-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

neries, and in addition shall be acknowledged by the Chief Steward, where carried. Such acknowledgment shall state whether or not the work was actually performed. If there is any question or dispute concerning whether or not such work constitutes overtime under the provisions of this agreement, such acknowledgment shall not bind the Company to pay overtime, but shall be binding only as to the fact of the performance of the work. Disputed overtime shall be taken up directly by the Union with the Company for adjustment, and there shall be no stoppage of work pending adjustment. The Company agrees that acknowledgment of overtime claims as above provided shall be made promptly, and at specified times to be agreed upon by the delegates and the Company representative in charge.

Section 40. The following days shall be observed as holidays: Memorial Day (May 30th), Independence Day (July 4th), Labor Day (first Monday in September).

Section 41. When overtime is less than one hour, one hour shall be paid. The overtime rate shall be $1.00 per hour. The straight time hourly rate shall be 1/240 of the monthly compensation hereinafter set forth.

Section 42. Messman shall prepare and serve coffee when coffee is not made on range or when cook is not on duty.

Section 43. The Company will engage the same number of messmen for the respective canneries as

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

was engaged for each such cannery in 1939, provided that the same number of men are employed there in 1940.

Section 44. Messmen shall be required to do any scullion's work except on tally-scows, launches, tugs and pile drivers, and on the M.S. Kvichak and M.S. Madrono.

Section 45. Port Steward's instructions to members of the Stewards Department shall be transmitted through the Chief Steward.

Section 46. All pots, pans and dishes shall be washed in separate sinks in the canneries.

Section 47. All sinks shall be constructed of galvanized steel or shall be metal lined.

Section 48. Launch cooks staying ashore in excess of three (3) weeks shall receive second cook's wages only for the time actually spent ashore.

Section 49. Where bakers bake bread for the stores they shall be paid 7½c per loaf.

Section 50. When a member is incapacitated through drunkenness in cannery or on ship the Union delegate, with the Steward or Superintendent, shall deduct his wages from payroll at the rate of two (2) days for each day so incapacitated, the man or men doing his work to receive the amount deducted in lieu of overtime.

Section 51. When a member is in the judgment of a qualified physician incapacitated (meaning sickness through no fault of his own), the man or men doing his work shall be paid the same wage he re-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

ceived, provided that under such circumstances no member's wages shall be reduced.

Section 52. Where members are required to submit to physical examination, same shall be done in a dignified manner with regard to the method employed. All physicians and surgeons shall be licensed practitioners. When members are rejected, the Union reserves the right to furnish doctors for re-examination. In addition to the Medical Officers, the Company shall provide a sufficient number of First Aid Attendants and also First Aid and Medical Chests. No fees of any kind shall be charged by the Company or its Medical Staff for services to any member except for social disease and injuries resulting from drunkenness. Where members require surgical attention they shall be transported to the nearest hospital.

Section 53. Sufficient help shall be hired in San Francisco so that it will not be necessary to hire natives for the Stewards' Department except natives to wait on natives.

Section 54. Wages shall start forty-eight (48) hours after signing articles providing, however, that if ship sails prior to the termination of said forty-eight hours (48) hours, wages shall start as of date of sailing.

Section 55. When launches are taken from San Francisco to Alaska or Alaska to San Francisco under their own power, their own power, the run money shall be negotiated.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 56. Ship's cook shall receive one (1) hour overtime when meats are taken from ship's ice-box for cannery use if he supervises this work.

Section 57. All meals shall be served on crockery ware and satisfactory table gear shall be provided.

Section 57. Upon completion of the season's work and the day before actual arrival of vessel at point of discharge, the men shall be given an advance of Ten Dollars ($10.00). In no case shall members be compelled to wait more than forty-eight (48) hours to be paid off in full, except on Sundays and bank holidays. If for any reason, members are forced to wait more than forty-eight (48) hours for their full wages, they shall be paid at their regular rate for each day that they are compelled to wait, except Sundays and bank holidays. This shall not apply to compensation which is in dispute.

Section 59. A work schedule with the assignment of each employee in the Stewards' Department as to hours and duties shall be prepared and posted by the Chief Steward within twenty-four (24) hours after sailing, and in the canneries a work schedule shall be prepared and posted by the Chief Steward within twenty-four (24) hours after arrival.

Copies to be furnished to the delegate on the ships and in the canneries as soon as they are prepared for posting.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Schedule can be changed if found necessary by the Chief Steward.

Section 60. The Union agrees to furnish competent men within the employment covered by this agreement.

Section 61. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its re-negotiation.

Section 62. The following wage scale shall apply to Bristol Bay:

Chief Steward	$200.00
Chief Cook	165.00
Ship's Cook	165.00
Second Cook	140.00
Night Cook	140.00
Blue Room Cook	140.00
Launch Cook	115.00
Cook and Steward (Tug Boats Only)	165.00
Butcher	140.00
Chief Baker	165.00
Second Baker	140.00
Scullion	90.00
Dishwasher	87.50
Straight Laundryman	105.00
Assistant Laundryman	82.50
Messmen	82.50
Sanitaryman	82.50
Janitor	82.50
Storekeeper	120.00

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 63. With respect to the Manning Scale and Working Schedule for Diamond "P" Cannery, the Red Salmon Canning Co. proposes to take:

One (1) Chief Cook.

One (1) Second Cook—who remains on the American Star during discharging and loading and is ashore during the fishing season.

One (1) Night Cook—both on the American Star and ashore.

One (1) Ship's Cook—who remains on the American Star the full time.

Four (4) Launch Cooks—for Power Scows.

One (1) Launch Cook—for the Leader who acts as Scullion on American Star during period of discharging and again during the period of loading, for additional pay of $10.00 per month for the season.

One (1) Baker.

One (1) Second Baker.

One (1) Scullion.

One (1) Messman—who serves on the Fram as Launch Cook during the fishing season and receives the rate of $115.00 per month for the fishing season—or on board the Fram as Cook.

One (1) Messman—who takes care of the Petty Officer's Mess on the American Star and remains on board the American Star during the full time in Alaska, and for the additional payment of $10.00 per month for the season, makes beds, cleans the

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

rooms and washes the dishes for this mess and the men concerned.

Two (2) Messmen—who act as Messmen on board the American Star during the discharging and loading periods and receive $5.00 per month for the season extra for washing dishes during the time on the American Star discharging and loading.

One (1) Messman—who dishes up for the saloon on the ship and washes dishes for the saloon and who washes dishes while waiting on the Blue Room ashore, to receive $10.00 per month additional for the season.

One (1) Messman—who goes on tally scow during the fishing season.

One (1) Messman who acts as night Messman on the ship and goes to the Fishermen's mess ashore.

Two (2) Straight Messmen—who wait on Mechanics' Mess on ship and ashore.

One (1) Dishwasher.

One (1) Sanitary Man.

One (1) Janitor.

One (1) Laundryman.

One (1) Second Cook and Baker—who goes up on the Madrono,—goes to Diamond P Cannery—goes on the Tally Scows during fishing season,—back to Diamond P and returns on the Madrono.

One (1) Launch Cook—who goes up on the Madrono,—goes to the Pelican,—Diamond P Cannery and acts as Second Cook on Pelican during fish-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

ing season—stays on the Pelican during loading and returns on the Madrono.

One (1) Messman—who goes up on the Madrono, —does to Diamond P, and returns on the Madrono —who washes dishes, takes care of rooms and makes bed for the few men concerned.

This makes a total of twenty-eight (28) men for Diamond P.

For Ugashik (F)

One (1) Second Cook—who goes up on the American Star—goes to Ugashik and during the fishing season, may act as Cook on the Power Scow, or as Tally Scow Cook.

One (1) Baker—who goes up on the American Star, goes to Ugashik, remains there until he returns on the American Star, who also is to make 9:00 p.m. coffee only at Ugashik at night.

One (1) Scullion—who goes up on the American Star, goes to Ugashik, remains there and returns on the American Star.

One (1) Messman—who goes on the American Star, goes to Ugashik during the entire season and returns on the American Star.

One (1) Messman—who goes on the American Star, waits on table in the saloon—goes to Ugashik for the entire season and returns on the American Star, doing the same work, who does laundry at Ugashik on overtime.

One (1) Dishwasher—who goes up on the American Star—goes to Ugashik for the full season and returns on the American Star.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

One (1) Steward and Cook—who goes on the Madrono and who is Steward and Cook at Ugashik, and returns on the Madrono.

One (1) Second Cook—who remains on the Madrono during the entire season as Cook.

One (1) Messman who goes on the Madrono and washes dishes and makes beds while on the Madrono and stays on the Madrono all season.

One (1) Messman—who goes on the Madrono—goes to Ugashik, handles the Blue-Room and Mechanes' Mess, washes dishes and helps make beds on the Madrono and ashore at Ugashik—takes care of the rooms and makes beds where necessary, for the additional sum of $10.00 per month for the season.

Total of ten (10) men for Ugashik .

Section 64. It is understood that during the fishing season, Messmen employed on the Bunk Scows may be brought to the canneries on Saturday nights if desired, to assist in waiti g on fishermen.

Section 65. The work involved on the trip of the Madrono to Alaska and return, is well understood by your Committee and it is agreed that the Madrono shall carry the same number of men in the Stewards' Department as in 1938, with the exception that the Madrono Cook shall be signed as Second Cook and all work shall be performed regardless of rating and for wages specified in Ship Articles, to including making up rooms and beds of those who are entitled to such service, washing

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

dishes and pots and preparing vegetables, and when such skeleton crew goes ashore in Alaska, to continue to perform all such work of the Stewards' Department until arrival of a full crew carried on the American Star, at which time men will do only such work as called for under their ratings. The Messmen left aboard the Madrono and American Star also to wash dishes, and make beds and care for rooms of the few men requiring such services, to be signed as ship Messmen.

Section 66. Any limitation of hours that may be applicable under the Federal Fair Labor Standards Act shall be applied in operating under this agreement.

ALASKA SALMON INDUSTRY, INC.

By .....

For ALASKA PACKERS ASSOCIATION
RED SALMON CANNING CO.
MARINE COOKS' AND STEWARDS' ASSOCIATION OF THE PACIFIC-C I O.

By .....

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

April 19, 1940.

Alaska Fishermen' Union
49 Clay Street
San Francisco, California

Gentlemen:

In accordance with our discussion yesterday we submit the following to you as our proposal for the 1940 season at Bristol Bay.

We desire to establish certain uniform conditions in all contracts covering the Bristol Bay operation, and for this purpose propose the following:

1. All contracts shall expire on January 1st, and shaould be automatically extended thereafter from year to year unless on or before the preceding first of December, either party notifies the other party of termination of the contract or requests re-negotiation for the following year.

2. The employer shall not be liable for any penalties if the condition upon which they depend has been brought about directly by a labor dispute involving job action not based on a violation of contract by the employer.

3. There shall be no obligation on the part of the employer to continue employment if vessels are disposed of or chartered or if the expedition is abandoned.

4. The employer shall have the right to select the supervisory employees, with the understanding that such employees may be members of any craft

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

now having bargaining relationships with the employer.

To provide for the 1940 season at Bristol Bay only, we propose to you, in addition to the foregoing, the 1939 contract of the Alaska Packers Association with the following modifications:

1. Section 5 (b) shall be changed to read:

"If vessels call for cargo or personnel at any intermediate port or cannery in Alaska, other than on Bristol Bay, on the home voyage, men not on monthly wages shall receive, in addition to full run money and all other earnings, coasting rates from date of arrival until date of departure, both dates included. Men handling cargo shall each receive One Dollar extra per hour in addition. If calls are made at more than one port or cannery, other than in Bristol Bay, the payment of coasting rates shall continue until date of leaving the last port of call."

Alaska Fishermen's Union
Page Two
April 19, 1940

2. Section 5 (d) shall be changed to read:

"Any man signing this agreement and discharged without his consent before sailing shall receive Seventy Five Dollars as full compensation, to be paid within forty eight hours after such discharge, provided that this section shall not apply in the event that the expedition for which the man has been engaged is unable to sail because of a labor dispute."

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

3. Section 12 shall be changed to read:

"Sec. 12. Boat crew having swamped their boat shall assist in salvaging their own equipment, provided, however, if detained from fishing more than three hours after having reported themselves at the cannery to the superintendent or whoever may be in charge, or six hours if having reported themselves elsewhere to an authorized person of the same company (authorized persons herein referred to, to mean any of the company's tally-men in charge or captain of launches), they shall be put to work until such time as boat is provided, and for which work they shall be paid average, or the limit, as the case may be. This rule shall also apply to boat crew requiring repairs on their boat."

4. Section 13 (d) shall be changed to read:

"Any other seaman, fisherman or trapman who has signed for monthly wages and percentages and who is laid up through sickness or natural ailments, and is unable to work according to the judgment of a physician, shall be paid his monthly wages and all other earnings up to the date so laid up, and shall thereafter be paid his respective monthly wages until placed in a hospital in San Francisco, Seattle, or Astoria, or if resident fisherman, in the nearest hospital. In the event of dispute, the Superintendent will make effort to secure the opinion of another qualified physician."

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

5. Section 15 (a) shall be changed to read:

"Sec. 15. The employer through its superintendent or agent in charge may at any time discharge any party of the second part for refusal to perform work, or for any other just cause, and his wages shall cease at the date of such discharge."

6. The second paragraph of Section 16 of the 1939 contract shall be deleted. This paragraph now reads:

Alaska Fishermen's Union
Page Three
April 19, 1940

"The delegate, on request shall be furnished with a copy of the diagnosis in regard to any accident, injury, or illness to any member, and said member or any person designated by him shall be permitted to examine all medical or other reports in regard to any accident, injury or illness pertaining to him."

7. The second paragraph of Section 22 shall be changed to read:

"Coffee shall be served at the ships and cannery to all hands at 3 p.m. and at 9 p.m. if working. After 9 p.m. fishermen must serve themselves."

8. It is desired to make a separate contract for beachmen and net tenders, in which will be placed all relevant provisions of the 1939 contract as modified herein.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

9. With regard to the price per fish as set forth in Section 4, each gill-net fisherman shall receive in addition to the other moneys therein mentioned, the sum of six cents for each Red or Coho salmon, instead of the sum of Seven and One-Eighth cents as provided in 1939, with proportionate reductions to be made in the price to be paid for all other varieties of fish.

10. With regard to the sums paid on cases of salmon as set forth in section 4, the same proportionate reduction will be made from the sums paid in 1939 as set forth above with reference to the price per fish.

11. The matter of compensation for net tenders we desire to leave open for further discussion.

We are sending to you, in answer to your request, written replies of Alaska Packers Association, Alaska Salmon Company, and Red Salmon Canning Company, to your communications regarding improvements at the respective canneries. These are submitted to you with the understanding that they are not to be taken as representations that there will or will not be expeditions to Bristol Bay this year, or that the specific canneries therein mentioned will or will not be operated. With this understanding, the operators have authorized us to state to you that the improvements and changes

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

agreed to be completed will be done during 1940, labor relations and the weather permitting.

Yours truly,

ALASKA SALMON INDUSTRY, INC.

By J. PAUL ST. SURE.

JPS/OB

PACKERS PROPOSAL 1940

Agreement

This Agreement, entered into this..... day of May, 1940, between Alaska Salmon Industry, Inc. (for Alaska Packers Association and Red Salmon Canning Co., each herein referred to as the Company), and International Association of Machinists, San Francisco Lodge No. 68 and East Bay Union of Machinists (each herein referred to as the Union) and each of the men signing hereto in the capacity of cannery Foremen, Machinists, Iron Chink Men, Seamer Men, Refor Men, Filler Men, Combination Men, Salmon Cooks, Utility Mechanics, and Mechanical or General Helpers, who work in the salmon canneries in Alaska,

Witnesseth:

Section 1. The parties of the second part hereby engage in the services of said company and promise for the consideration hereinafter mentioned, to work according to the lawful orders of the Superintendent, or whomever may be in charge during the time they shall remain in the employ of said company

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

in the capacity under which they have signed this agreement. Also to repair and maintain all machinery and mechanical equipment on boats, lighters and vessels and to operate, repair and maintain all machinery and mechanical equipment in the canneries to which they may be assigned according to the terms of this agreement and for the compensation herein provided in accordance with the classification herein provided, which shall be the terms of employment and the schedule of compensation for the 1940 season.

Section 2. At least one week before sailing, the company shall furnish the representative of the Association as complete a list as possible of the crew coming under the jurisdiction of the Union.

Section 3. All employees hired at the port of embarkation under this agreement shall be members in the Union. The Union recognizes that the Company will hire men in Alaska and agree to furnish such men if available. Bona fide residents of Alaska shall be given preference.

Section 4. The Company shall agree to pay the following rates of pay to the various classifications of employees who shall be members of the Union.

Section 5. The following are the rates of pay for the 1940 season.

BRISTOL BAY

Maximum Season, 3 Months 10 Days.	
Foreman, 3 or more lines	$2,300.00
Foreman, 2 lines	2,200.00

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Foreman, one line cannery which does not employ first machinist	2,000.00
Foreman, one line cannery which employs first machinist	1,800.00
First Machinist	1,200.00
Second Machinist	850.00
Shop Machinist	850.00
Iron Chink Man (2 chinks or more)	750.00
Iron Chink Man (1 chink)	600.00

An Iron Chink Man, in order to be under this classification, must be a Machinist of sufficient experience to do all his own repair work on Iron Chinks. If unable to perform such work he will be under the lower pay bracket, regardless of the number of machines in the Cannery. The number of Iron Chinks regularly operated during the season shall be used as the basis for determining the rate of compensation.

Fillerman, Seamerman, Reformerman, Combination Man, New Automatic Labeling and Casing Machine Operator	$ 600.00
Salmon Cook	500.00
Mechanical Helper	400.00

If men are required to work longer than the time stipulated for the District in which they are working, they shall receive additional compensation over and above the amount fixed for their class of work for such stipulated period, the same to be computed and paid at a daily rate equal to the total amount of the agreed pay for the stipulated period divided by the number of days in such stipulated period. This shall not apply to Cannery Foremen,

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

whose season shall be as has been customary in the past.

Section 6. Nothing herein shall preclude the payment of higher rate at the discretion of the employer, and no one shall be discriminated against for his Union activities.

Section 7. Hours of work during Canning Season: Eight (8) hours in a spread of any nine (9) consecutive hours shall constitute a day's work, computed from midnight to midnight. Six days shall constitute a regular week's work and the Company may elect which day shall be the day of rest. The foregoing limitations shall not apply to Foreman. The Cannery Superintendent shall determine the beginning and ending of the Canning Season. When an employee has terminated a shift, he shall not be required to start work again until a four (4) hours rest period has elapsed, unless he receives overtime pay, provided that employee shall put in eight consecutive hours of work in a spread of nine (9) hours at straight time in every twenty-four (24) hours from midnight to midnight.

Section 8. Hours of work Before and After Canning Season: Eight (8) hours shall constitute a day's work between the hours of 8 A. M. and 5 P. M. with one hour lunch period to be reached by mutual agreement.

Section 9. Overtime and Holidays: Any time worked in excess of the regular eight (8) hours within a twenty-four (24) hour period, midnight

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

to midnight, and any time worked on the day of rest which shall have been designated pursuant to the preceding paragraph, shall constitute overtime and shall be paid for at the following rates:—

OVERTIME RATES FOR ANY CANNERY

Section 10. The rates of overtime compensation shall be as follows:—

	First 150 hours per hour	Balance of hours per hour
First and Second Machinist—(Shop Machinist)	$1.25	$1.50
Iron Chink Man, Filler Man Seamer Man; Reformer Man, Combination Man, New Automatic, Labeling and Casing Machine Operator	.92½	1.00
Salmon Cook, Mechanical Helper	.72½	.75

Iron Chink Man receiving the higher rate of pay, shall receive overtime at the rate of $1.25 and $1.50 per hour, for the respective hours.

Section 11. The following are legal holidays: Decoration Day, Independence Day and Labor Day. All work performed on above holidays to be paid for at overtime rates. When holidays fall on the day of rest, the following day shall be observed.

Section 12. Employees must have their working time entered and approved daily in their time books by the bookkeeper or foreman. Employee shall receive a complete statement of season's earnings within forty-eight (48) hours after arrival at home port. In the event that the service of an employee is

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

not satisfactory, barring him from re-employment with the Company the following season, the Company shall so notify the employee through the Union and furnish the Local with a copy of same not later than December First.

Section 13. If, for the principal part of the season any employee shall be assigned to any employment carrying with it a higher rate of wage than that for which he was originally employed, such higher rate of wage shall apply to his entire employment under this agreement and appropriate adjustment shall be made accordingly when employee is paid off. Provided, however, that if such change of employment is due to the injury, sickness, death, incapacity, change of employment, quitting or discharge of another employee, then any increased rate of pay shall apply only from the time employee is advanced. Any employee unable to satisfactorily fill the position for which hired or to which he has been transferred, may be transferred to a position with a lower rate of pay if reasons are furnished to the delegate. In such case he shall receive the higher rate only during the period so employed. The Company agrees to sign the men on in their various capacities before leaving port of embarkation. It is mutually agreed that members of the Union, when employed in salmon canneries shall be permitted by said Union to work at various and sundry jobs within a salmon cannery during the actual canning season.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 14. During the operation of the cannery, provision shall be made to keep the general crew quarters ashore clean, make fires when necessary and to keep said quarters in a sanitary condition. All canneries shall have good, clean shower baths and laundry room and all men shall be furnished a good cotton mattress and spring. Laundry soap and washing powder shall be furnished.

Section 15. When men are required to work where oil skins and boots are necessary, the same shall be furnished by the Company free of charge and the same shall be returned to the Company at the close of the season at the discretion of the Superintendent.

Section 16. One hour shall be allowed for all regular meals except during the height of the canning season. The limits of meal hours shall be: Breakfast, 6 to 8 A. M.; Dinner, 11 A. M. to 1 P. M.; Supper, 5 to 7 P. M., except where mutually agreed. Men at the cannery required to work until midnight shall receive hot coffee and lunch. Men who continue to work after midnight shall receive hot meal at the mess house.

Section 17. Men shall be privileged to stop work for 10 minutes for coffee at the customary hours prevailing at the cannery.

Section 18. The Company agrees to recognize one employee at each cannery, designated by the members of this Union at such cannery, to act as the delegate and representative of this Union, whose

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

duty in addition to his regular prescribed duties as an employee, shall be to see that the members of this Union in that cannery observe the agreement and at the same time that the rights and interests of such members under the agreement are protected.

Section 19. No employee shall be required to be alone in a cannery to do repair work.

Section 20. Any employee covered by this agreement, who from injury sustained while at work for the company, through no fault of his own is prevented from working according to the judgment of a physician, is to continue to receive his respective pay according to this agreement during the period of the injury. Provided, however, that in the event the injury to any employee comes within the purview of the Workmen's Compensation Act for the Territory of Alaska, or any other Compensation Act, Territorial Federal or State, the Company will pay the benefits specified in such applicable compensation act, and in addition thereto, such amount as will equal the difference between the compensation paid and the pay of such employee according to this agreement. Provided, further, that if the disability continues beyond the termination of the season he shall receive thereafter only the amount to which he would be entitled under the Workmen's Compensation Act for the Territory of Alaska, or any other compensation act applicable to his employment. Employees, if and when injured. shall

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

report such injuries to the foreman in charge immediately at the time of the injury. Any such employee shall be entitled to medical and surgical attention and necessities without cost, in accordance with the requirements of the Workmen's Compensation Act for the Territory of Alaska, or any other compensation act applicable to his employment.

Section 21. Any employee covered by this agreement who is laid up because of sickness, or natural ailments or an injury sustained outside the scope of his employment, and who is unable to work according to the judgment of a physican, shall be paid his monthly wages and all other earnings up to the date so laid up, and shall thereafter be paid only the sum of $50.00 per month from the date so laid up until able to work, or until placed in a hospital, or until transported to a place where hospital facilities are available, at which time the Company's liability shall cease. If, however, it is necessary for the Company to guarantee hospital expenses, etc., in order to place employee in hospital, such expenses shall be borne by the employee. It shall be, however, the thorough understanding that in the case of sickness or natural ailments, or an injury sustained outside of the scope of his employment, that the Company will not be liable for wages after the date the majority of the employees of such cannery have arrived at the port of embarkation. In the event of a dispute, the Superintendent will also make an effort to secure the opinion of another qual-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

ified physician. All employees so laid up through sickness, or natural ailments while engaged under this contract, shall receive medical and surgical attention and necessities without charge so long as they shall be entitled to payment of the $50.00 per month under the terms of this section. Provided, however, that in the event an employee contracts or suffers from a venereal disease, he shall be entitled to no compensation during the period he is unable to work, and the Company shall be under no obligation to furnish such employee medical attention or hospitalization.

Section 22. Should it be necessary to replace any man covered by this agreement during the season because of death, injury, sickness, quitting or discharge of another employee as referred to in Sections 31 and 32, the provision as to the guarantee period of employment are not to apply, and payment shall be made to such replacements only for the period employed based on the proportionate part of the season as defined herein.

Section 23. It is agreed that there shall be no gambling and no excess quantity of liquor shall be taken or sent aboard any vessel or any other Company property.

Section 24. It is expressly agreed that neither the Superintendent in charge, nor any other agent of the employees, nor of the Machinists' Union has the power or authority to change the provisions of this agreement.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 25. School, Poll, Social Security, or other taxes assessed against employees for compensation insurance or hospitalization authorized by any Federal, State or Territorial law, shall be deducted by the employer from any wages due, and the employer shall withhold any payments when required to do so by writ of garnishment or legal proceedings, or by valid assignment.

Section 26. It is understood that before embarking, each employee shall submit at such time and place as the Company shall designate, to a medical examination. If any employee shall fail to pass such examination satisfactorily this contract shall be null and void so far as such employee is concerned.

Section 27. Whenever men employed under this agreement are asked to do longshore work they shall do so at the rate of 80 cents per hour.

Section 28. The employees party to this agreement shall not refuse to go through a picket line, unless such picket line is officially recognized by the Union. Employees refusing to go through a picket line shall receive no pay or compensation while work is suspended, and shall pay the Company board at the rate of $1.00 per day if furnished.

Section 29. This agreement shall not apply to canneries whose original outfiting for the season is based on 10,000 cases or less. The number of cases shall be computed upon the basis of a case of 48 pound talls or the equivalent.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 30. All men to be furnished adequate transportation or transportation on a cannery vessel which shall be considered adequate, provided that there shall be a regular bunk for every person aboard. Steerage transportation on regular passenger steamers shall not be considered adequate for men covered by this agreement.

Section 31. The Company, through its Superintendent or agent in charge, at any time may discharge any employee covered by this agreement for refusal to perform work, or for any other just cause, and his wages shall cease at the date of such discharge, and such discharged employee shall receive a pro rata part of his seasonal rate. However, if any employee is found to have been arbitrarily discharged, he shall be paid the wages he would have normally earned during the period lost by reason of such wrongful discharge, plus $1.00 per day for board, provided such employee paid board and was not otherwise employed during such period; all subject to adjustment by reason of wages such employee earned from time of dismissal.

Section 32. Any employee who quits shall be paid all wages and overtime up to date of quitting, but shall not be furnished return transportation to port of embarkation.

Section 33. Men discharged shall be given free transportation to port of embarkation, including maintenance.

Section 34. There shall be no strikes, lockouts

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

or stoppages of work during the period of this agreement for any cause by any employee, group of employees or the Union. Any disputes that cannot be settled at cannery are to be adjusted and settled after the season at port of embarkation of the expedition.

Section 35. Neither the Machinists' Union nor the employees covered by this agreement shall interfere with the performance of work outside the general scope of this agreement, provided such work is customary in the salmon industry in the particular locality, and is arranged for with the other employees by the employer on mutually satisfactory terms and conditions, nor shall the Machinists' Union nor the employees covered by this agreement interfere with the performance of work by other employees, provided it is customary in particular localities to employ other employees to do such work.

Section 36. When emergency requires, work necessary for safety of vessel or any other Company property shall be done at any time and without extra compensation.

Section 37. For the homeward voyage the Company is to have the right to transfer men from one vessel to another.

Section 38. Men transferred to work at another cannery shall receive in addition to all monies then earned, wages and working conditions prevailing at the cannery to which they are transferred in similar positions.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section 39. Men may be transferred from one cannery or district to another where that is agreed to at the time of signing this agreement or during the fishing season. Such men shall receive the prevailing wage for the time spent in each cannery or district, and an agreed proportion of the percentage based on the proportion of the season worked in each cannery or district, and they shall have the same working conditions as those prevailing under the agreement of the district containing the cannery to which they are transferred in similar positions.

Section 40. In the event the cannery is destroyed or so greatly damaged from any cause, or the laws, rules or regulations with reference to salmon fishing or canning be changed, or that in the Company's judgment, because of strikes or for any reason, it would be impossible or unprofitable to continue operations, the Company may terminate this agreement excepting that the Company shall return each employee covered by this agreement to point where hired, at its expense and pay him until such return, unless employee should elect to remain in Alaska, in which event his employment shall terminate at the Cannery.

Section 41. The parties hereto, hereby waive the provisions of Chapter 45 of the Session Laws of the Territory of Alaska for the year 1925 and all amendments thereof and Acts supplemental thereto, and agree that the payment of wages and other compensation referred to in this contract shall be

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

in accordance with the provisions of this agreement and without regard to the requirements of said Act.

Section 42. This contract is entered into subject to all present and future laws, rules and regulations which may be prescribed by the Government of the United States, the Secretary of Commerce, or other governmental authorities exercising jurisdiction; and if, at any time any of the provisions of this contract shall be contrary to any such laws, rules and regulations, then said provisions are, so far as they conflict with such rules and regulations to be considered abrogated and not binding on either of the parties hereto.

Section 43. There shall be no obligation on the part of the Company to furnish radio press or other news service if to do so would require payment of overtime to any of the Company's employees.

Section 44. There shall be no obligation on the part of the Company to continue any employment or compensation hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered, or otherwise disposed of, and in case of such termination of employment the seasonal compensation hereinabove provided for shall be pro rated as of the date employment ceases.

Section 45. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its renegotiation.

Section 46. The Union agrees to furnish competent men within employments covered by this agreement.

INTERNATIONAL ASSOCIATION OF MACHINISTS, SAN FRANCISCO LODGE No. 68

By.....

EAST BAY UNION OF MACHINISTS

By.....

ALASKA SALMON INDUSTRY, INC.

By.....

For:

ALASKA PACKERS ASSOCIATION

RED SALMON CANNING CO.

PACKERS PROPOSAL 1940

Masters Mates & Pilots

Agreement

This Agreement entered into this ..... day of May, 1940, by and between Alaska Salmon Industry, Inc. (for Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Co., each herein referred to as the Company), and Na-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

tional Organization of Masters, Mates & Pilots of America, herein referred to as the Association and the Union,

Witnesseth:

Whereas, the Party of the First Part has been recognized by the Party of the Second Part as the representative of their licensed employees in the Deck Department of their respective vessels for collective bargaining, and the parties hereto have carried on collective bargaining for the purpose of making an agreement fixing hours, wages and working conditions.

Now, Therefore, the parties hereto agree as follows:

Section One. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this agreement or requests its re-negotiation.

Preference of employment for all licensed deck officers shall be given members of West Coast Local No. 90, National Organization of Masters, Mates and Pilots of America in filling vacancies when available, provided that they are qualified to fill such position. The employer shall have the right to pick his own employee, provided, such employee is a member of the National Organization of Mas-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

ters, Mates and Pilots of America in good standing, and shall register and be cleared through the offices of West Coast Local No. 90.

Section Two. All disputes relating to this agreement or its interpretation shall be determined by a Licensed Personnel Board, consisting of two persons appointed by the Party of the First Part and two persons appointed by the Party of the Second Part. The parties shall submit such dispute to decision by such board and they agree to be bound by such decision. In the event that said Board shall not agree, an additional member shall be appointed by them, whose decision shall be final. Should be Board fail to agree on appointment of additional member, the Secretary of Labor shall be requested to appoint one agreeable to both parties.

Upon a written notice from any party hereto, stating the purpose of the meeting, the Board shall meet within twenty-four (24) hours. However, no licensed deck officer shall be required to work under conditions which are inimical to his personal safety and health. No licensed deck officer shall be required to work within or pass through picket lines established by any recognized labor union whose members are employed by the Company. The refusal of any licensed deck officer to work under the conditions described in this section shall not be considered a violation of this agreement.

Section Three. Authorized representatives of the Party of the First Part shall have the right to go

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

on board ships of the Party of the Second Part at all reasonable times, at all ports, for the purpose of consulting with deck officers employed thereon.

Section Four. National Organization of Masters, Mates and Pilots of America, West Coast Local No. 90, San Francisco Headquarters, agrees to aid the Party of the Second Part in every way to maintain the highest possible calibre of licensed personnel employed in the Deck Department of all the vessels covered by this agreement.

Section Five. Any master, mate or pilot covered by this agreement, receiving a higher monthly wage than the minimum specified herein shall continue to receive the same during the life of this agreement.

Section Six. Vessels shall be considered in commission from the day of starting loading until the day vessels are returned to the laying-up grounds at the end of the season, both days inclusive.

This clause applies when vessels actually leave winter quarters and start in loading and proceed to sail for Alaska. Periodic loading during the lay up period shall not apply.

When in commission, a full complement of Mates shall be employed on each vessel. If this is not complied with, those officers who subsequently man the vessel shall be paid wages, subsistence and room money from the date vessel leaves winter quarters or their predecessors left the ship. No licensed officer shall be laid off while the ship is in commission.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section Seven. During the first fifteen (15) days of a period at idle status the licensed officers shall be kept at full pay and subsistence, thereafter at monthly pay only.

"Idle status" for the purpose of this agreement shall mean a period of temporary lay-up between voyages at the company's yard and shall be reckoned from the time cargo has been discharged until the vessel begins to load again or proceeds to sea again on her next voyage excepting upon unusual curtailment of the fishing season.

Section Eight. When vessels are in commission and meals are not furnished, Masters and Mates shall each be paid subsistence of Three Dollars ($3.00) per day, ($1.00 per meal). If rooms are not in proper condition, such as beds not made up, no heat or light, additional allowance of $2.00 per night shall be paid each officer.

Section Nine. The members of the Association employed as licensed officers, shall at all times carry on their duties in the interest of and in accordance with the lawful requirements of the company, subject to the terms and provisions of this agreement. No Licensed Officer shall be dismissed except for cause to be stated in a written statement to the Association. An officer so dismissed shall have the privilege to place his case before the Personnel Board and the decision of the Board shall pass final judgment. At termination of fishing season the Employer to notify Local No. 90 in writing

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

of the members who they do not wish to employ. There shall be no discrimination against any man for union activity.

Section Ten. The following days shall be observed as holidays in ports other than Bering Sea: All Sundays and Saturday afternoons, New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, July 4th, Labor Day, Armistice Day, Thanksgiving Day, Christmas Day and all other holidays observed in the Port the vessel may be in when in the United States of America. When any of the foregoing holidays fall on a Sunday, the following Monday shall be observed as a holiday.

Section Eleven. When sent from one ship to another or from one port to another in the course of employment, officers shall be paid their regular wages and expenses incurred in traveling. All transportation shall be first-class and include berth and meals while traveling. If subsistance is not included with transportation, subsistance allowance at the rate of $3.75 per day shall be paid. While ashore and no living quarters are provided, room allowance at the rate of $2.00 per day shall be paid.

Section Twelve. If, prior to the completion of the shipping articles, the vessel is withdrawn from service for any cause, Licensed Deck Officers shall be provided with return transportation and subsistance as provided in Section #11, to the port where articles were signed, unless another port is designated in the articles. Full wages shall be paid up to the time of arrival at such port.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section Thirteen. Sea-watches shall be set at noon on days of sailing and shall continue until vessel arrives at next port. If the stay in port is less than 24 hours sea watches shall not be broken. When necessary to anchor, regular watches may be maintained at the discretion of the Master. Four hours shall constitute a sea-watch. Two such watches shall constitute a day's work.

Section Fourteen. For the safety of those on board, mates on watch while at sea, shall do no other work than regular watch duties.

Section Fifteen. At sea, all work in excess of eight hours, reckoned from midnight to midnight, overtime shall be paid. When sea watches are maintained, at sea or in port, Mates shall be paid overtime if called from watch below. No overtime shall be paid for work done for the safety of the passengers, crew or vessel, or for the safety of the equipment and cargo provided same shall have been properly secured and stowed before the vessel leaves the dock for sea.

Section Sixteen. While vessels are in commission the work of licensed deck officers shall consist of such work as is necessary for the safe navigation of the vessel and the supervision of loading, discharging and fueling operations and the supervision of other work performed for the safety of and maintenance of the vessel. No licensed officer shall be required to do work customarily performed by

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

seamen, such as washing, painting, etc. Officers may supervise such work.

Section Seventeen. Officers in charge of a watch shall each have their individual stateroom. All officers' quarters shall be properly equipped with running fresh water, cleaned daily, heated and lighted at all times during occupancy and be provided with sufficient clean linen and bedding. Each vessel shall provide a washroom for the use of Deck Officers only, this washroom to be equipped with hot and cold running fresh water and fresh water shower facilities and be properly drained. In case the provisions above are not complied with the officers involved shall be compensated at the rate of $1.00 per day while occupying quarters aboard ship.

These provisions shall apply to all vessels excepting the Kvichak, Kanak, Alitak and Chilkat. During the cannery voyages of the Chirikof and Delarof the 2nd and 3rd officers will not be supplied with individual staterooms.

The above provisions of Section 17 shall also be modified as follows: Second and Third officers shall not be supplied with individual staterooms on the SS American Star and SS Madrono on the voyage to Bering Sea or from Bering Sea returning, but on arrival at the fishing grounds these officers shall be supplied with separate rooms. On the Fram the provision regarding clean linen shall apply.

Section Eighteen. No deck officer shall be per-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

mitted to take charge of a watch upon leaving or immediately after leaving port unless such officer shall have had at least six hours off duty within the twelve hours immediately preceding the time of sailing.

Section Nineteen. For all launches and tugboats on which heretofore both a Master and Engineer have been employed, the company agrees to employ Masters selected from the membership of the Association in the manner provided in Section #1.

Section Twenty. All licensed officers and launch masters shall have their meals served in the officers' Dining Saloon while on board and in the "Blue Room" while ashore.

When 10 A.M. and 3 P.M. coffee is provided for other members of the crew, the same shall be provided for the Mates. Masters and Mates shall have the right to make their own coffee, tea, cocoa, etc. at all times.

Section Twenty-One. A Licensed Deck Officer may stipulate in his shipping articles for an allotment of any portion of his wages as provided by law.

Section Twenty-Two. Masters excepting on Kanak, Chilkat, Alitak and Madrono shall be employed the year round and except as provided in Section 33 and shall be paid the following wages and while their vessels are in commission they shall receive in addition subsistance, quarters, maintenance and cure as customary.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Vessel	Out of Commission	In Commission
Bering	$250.00 per month	$340.00 per month
Chirikof	250.00 per month	340.00 per month
Delarof	250.00 per month	340.00 per month
Etolin	250.00 per month	340.00 per month
Kvichak	250.00 per month	300.00 per month
Kanak	180.00 per month	260.00 per month
Chilkat	180.00 per month	260.00 per month
Alitak	180.00 per month	260.00 per month
American Star	250.00 per month	340.00 per month
Madrono	200.00 per month	275.00 per month

Masters of above vessels do not receive overtime pay.

Section Twenty-Three. Masters on power boats who are not assigned as mate or master of any particular ship or tender, but who go up as passengers, shall receive not less than One Hundred Seventy Dollars ($170.00) per month; and percentages as provided in Section 25.

Section 24. The following monthly wages together with subsistance, quarters, maintenance and cure as customary shall be paid to Licensed Deck Officers according to their respective ratings.

Vessel	1st Mate	2nd Mate	3rd Mate
Bering	$220.00 per month	$200.00 per month	$185.00 per month
Chirikof	220.00 per month	200.00 per month	185.00 per month
Delarof	220.00 per month	200.00 per month	185.00 per month
Etolin	220.00 per month	200.00 per month	185.00 per month
Kvichak	205.00 per month	185.00 per month	170.00 per month

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Kanak

180.00 per month 170.00 per month

Alitak

180.00 per month 170.00 per month

Chilkat

180.00 per month 170.00 per month

American Star

220.00 per month 200.00 per month 185.00 per month

~~Androno~~

Madrono

190.00 per month 180.00 per month 170.00 per month

The rate of overtime pay for officers shall be $1.25 per hour. Overtime shall be paid for work which is not the regular duty of a Licensed Officer. Not less than one hour overtime shall be paid for an overtime period of less than one hour elapsed time. If the interval in time between overtime periods is less than two hours, overtime shall be paid continuously. Any work in excess of fifteen (15) minutes shall be considered as one hour overtime. During the period between arrival in and departure from Bristol Bay all Masters and Mates shall perform work to which they are assigned, such as supervising loading and discharging on vessels, tallying, serving as Beach Bosses or Masters of launches, or in any other capacity heretofore employed, without payment of overtime. In lieu of overtime during this period Masters and Mates shall receive the percentages set forth in Section 25-A.

Section Twenty-Five A. Masters of major vessels, Masters of tugs, launches and self-propelling

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

lighters shall receive in addition to their regular monthly wages percentages as follows:

Nushagak	$5.00 per 1000 cases
Kvichak	1.43 per 1000 cases
Naknek—Alaska Packers Assn.	1.25 per 1000 cases
Egegak	1.25 per 1000 cases
Ugashik	10.00 per 1000 cases
Naknek—Diamond P	2.50 per 1000 cases

B—In the case of salted salmon, each barrel of salmon is to be computed as four cases and each half barrel as two cases of 48 pound tall cans.

Section Twenty-Six. Masters and other licensed deck officers shall tally fish as required.

Section Twenty-Seven. In Port except Bering Sea for vessels carrying cannery crew and cargo to and from Alaska; for work performed on Saturday afternoons, Sundays and Holidays, for work performed on other days between the hours of 5 P.M. and 8 A.M. overtime shall be paid.

Section Twenty-Eight. All tugs, launches and self-propelling lighters shall carry sufficient deckhands.

Section Twenty-Nine. The Company shall have a registered physician with proper equipment and ample medical supplies stationed at each location or within reasonable call.

No Licensed Deck Officer shall suffer loss of wages and bonus because of accident or occupational disease contracted during employment, and necessary medical and surgical service, except for

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

venereal diseases, shall be supplied free of charge while in Alaska.

Section Thirty. Before an officer is paid off at the end of the season a complete statement of his earnings shall be given him by an authorized official; all disputes over earnings must be adjusted before pay is accepted.

Section Thirty-One. While ship is at anchor in winter quarters, power transportation must be furnished to and from ship. Boat must have inboard power and must be able to withstand winter storms in the Bay.

Section Thirty-Two. The Masters, Mates & Pilots, Local #90, shall maintain and continue to do all work during the Alaska Fishing season that has been done by custom heretofore; such as launch and tugboat captains, tally work, beach boss, winter work in yard and on ships. Mates employed when vessels are laid up shall not be paid less than $7.00 per day.

Section Thirty-Three. There shall be no obligation on the part of the Company to continue any employment hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

Section Thirty-Four. The Union agrees to furnish competent men within the employments covered by this agreement.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

In Witness Whereof, the parties hereto have executed this agreement on this ..... day of May, 1940.

THE NATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS OF AMERICA.

.....

.....

.....

.....

National Officer.

President, West Coast Local #90.

Secretary-Treasurer, West Coast Local #90.

ALASKA SALMON INDUSTRY, INC.

By .....

For:

Alaska Packers Association

Alaska Salmon Company

Red Salmon Canning Co.

PACKERS PROPOSAL 1940

Agreement

This Agreement executed this ..... day of May, 1940, by and between ALASKA SALMON INDUS-

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

TRY, INC. (for ALASKA PACKERS ASSOCIATION, ALASKA SALMON COMPNY, and RED SALMON CANNING CO., each herein referred to as the Company), and SAILORS UNION OF THE PACIFIC,

WITNESSETH:

Section One. If operated, all tug boats, launches and power scows manned by members of the Sailors Union in 1939 shall be manned by members of this organization in 1940. These men shall be shipped out of the offices of the Sailors Union of the Pacific.

Section Two: The wages shall be not less than One Hundred and Thirty Dollars ($130.00) per month.

Section Three. In lieu of all overtime, except as hereinafter provided, deck hands shall receive the following appropriate percentage:

For 1 line Cannery	$10.00 per 1,000 cases
2 line Cannery	5.00 per 1,000 cases
4 line Cannery	2.50 per 1,000 cases
8 line Cannery	1.25 per 1,000 cases

Deckhands shall tally fish as required without payment of overtime.

Section Four. Sailors shall have the right to make their coffee on the tender at all times.

Section Five. When working overtime not less than one (1) hour shall be paid for any fraction of the first hour; one-half (½) hour period to be paid

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

after the first hour has elapsed. The overtime rate shall be One Dollar ($1.00) per hour.

Section Six. When deckhands are called upon to load or discharge barges, regular overtime shall be paid at any time.

Section Seven. No member of the Sailors Union of the Pacific shall be required to go through any picket line established by organized labor, nor shall they be required to work if the vessel or the dock at which the vessel is lying is picketed by organized labor.

Section Eight. Blankets and linen shall be furnished by the Company, and clean linen will be furnished once a week, except on voyages to and from Alaska.

Section Nine. Any work performed such as coaling, fueling, or carrying stores, shall be done if fuel or stores are delivered on the end of the dock, otherwise overtime shall be paid.

Section Ten. This contract shall remain in full force and effect until January 1, 1941, and shall be automatically extended thereafter from year to year unless on or before the first of December immediately prior to such expiration date or any anniversary thereof either party notifies the other party of termination of this contract or requests its re-negotiation.

Section Eleven. The Union agrees to furnish competent men within the employments covered by this agreement.

(Testimony of Paul St. Sure.)

Respondent's Exhibit BB—(Continued)

Section Twelve. There shall be no obligation on the part of the Company to continue any employment hereunder in the event any expedition is abandoned or curtailed, or in the event any of its vessels are sold, chartered or otherwise disposed of.

SAILORS UNION OF THE PACIFIC

By .....

.....

ALASKA SALMON INDUSTRY, INC.

By .....

For:
Alaska Packers Association
Alaska Salmon Company
Red Salmon Canning Co.

Q. I think you were testifying, Mr. St. Sure, as to what occurred on the 2nd. Is there anything further that occurred other than that on the 2nd of May, 1940? Anything that occurred further than what you mentioned?

A. On the 2nd of May there were meetings, negotiations, with the Marine Engineers; Masters, Mates & Pilots; Firemen; and a further meeting with the representatives of the Alaska Cannery Workers Union. At this meeting on the second with the Alaska Cannery Workers Union there was further discussion concerning the memorandum to be discussed, if

(Testimony of Paul St. Sure.)

any, to cover the operation or to act as a binder for the Cannery Workers in the event there was a Bristol Bay operation. The Union continued to insist that the memorandum, if it was to be executed, should be conditioned upon the 1940 Seattle Agreement alone or that if no agreement was reached there it should be based upon the 1939 San Francisco conditions, even though the workers had already gone out of Seattle upon the memorandum basis that they would operate under the 1939 Seattle if no agreements were reached. The Union Committee, likewise, insisted that we agree that the jurisdiction of the Cannery Workers [144] Union be extended to cover the nurses and that all nurses engaged in San Francisco should be taken from the San Francisco Local; and insisted that negotiations for the Daily men which we requested be conducted separately in San Francisco. They desired to have them continued to be negotiated in Seattle. The result was that no understanding was reached at that meeting, which was in the late afternoon of the 2nd of May, concerning a memorandum agreement. And, on the following day a communication was sent to Alaska Cannery Workers Union summarizing the meeting on the 2nd, which I have just described, and stating the position of the Alaska Salmon Industry in connection with the proposed memorandum.

Mr. Madison: I offer this letter in evidence dated May 3, 1940. I ask that be marked Exhibit CC.

(Received in evidence as Respondent's Exhibit CC.)

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT CC

May 3, 1940

Alaska Cannery Workers Union
32 Clay St;
San Francisco, California

Gentlemen:

Your committee has advised us that you would give us a statement agreeing to be bound by whatever contract may be negotiated in Seattle for Bristol Bay this year, provided we agree for the San Francisco operators that whatever nurses may be engaged by them this year will be employed through Local Five of the Alaska Cannery Workers Union. Your committee also declined to negotiate here for tallymen even though none of the northern canners employ tallymen from your union.

Your proposal is unsatisfactory for three reasons. First, it does not leave us with any understanding in the event there should be no Seattle agreement with your union. The San Francisco companies have from the start of negotiations taken the position that they must have definite understandings with all organizations before proceeding to outfit expeditions, and your proposal falls short of meeting this condition.

Second, in accordance with your earlier correspondence, we agree with you that where there is a common interest between Seattle and San Francisco operators, all negotiations should be conducted in Seattle. This includes jurisdictional questions as well as other working conditions, and we of course

(Testimony of Paul St. Sure.)

agree that whatever decision may be reached in Seattle as to the nurses will be binding upon the Alaska Packers Association and Red Salmon Canning Co.

Third, we request that negotiations for tallymen be conducted here, inasmuch as Seattle employs no tallymen from your organization.

We repeat that we desire to proceed with plans for Bristol Bay upon the understanding that the 1940 Seattle agreement will be applied, and that in the event no negotiations are concluded there, the 1939 Seattle contract will be applied. This we believe, is the same basis upon which your union in Seattle has released a number of expeditions to Alaska already. As we have also informed you, we must have your reply to this before the close of the day.

Yours truly,

ALASKA SALMON INDUSTRY, INC.

By

EHM/CH

Q. Now, Mr. St. Sure, referring back to Exhibit BB, the list of proposals, written proposals, that were discussed, do you recall the date approximately when those were submitted? Did you testify the 27th? 28th?

A. 27th, 28th, 29th, along in that neighborhood; there were letters of transmittal attached to each.

(Testimony of Paul St. Sure.)

I don't seem to have them here, but it was prior to the 1st of May, my recollection being, as refreshed from the date of the letter to the American Communications Association, the 29th of April. I have, however, in my mind the other memoranda were sent out a day or two previously to that.

Q. That is, the 27th, 28th, 29th refers to April, 1940? A. That is right.

Q. Did anything else happen on May 2nd, now, you haven't testified to? A. Not that I recall.

Q. Then, what happened on May 3rd?

A. May 3rd, following the delivery of the letter that has just been marked one addressed to the Alaska Cannery Workers Union Memoranda Proposal we received a reply from Mr. Whaley at about ten minutes to five in the afternoon simply stating in reply to our letter that their position that they had outlined to us on the 2nd of May was their final position. By "they" I mean the Alaska Cannery Workers Union.

Q. That is dated what date? A. May 3rd.

Mr. Madison: I ask that that letter be introduced in evidence and marked Exhibit DD—letter from Whaley to St. Sure dated May 3rd. [145]

(Testimony of Paul St. Sure.)

RESPONDENT'S EXHIBIT DD

Alaska Cannery Workers Union
Local No. 5, C. I. O.
George Woolf, President
Karl G. Yoneda, Vice-President
Raymond Aguirre, Secretary
32 Clay Street
San Francisco
Phone EXbrook 4871

Affiliated to
United Cannery, Agricultural Packing & Allied Workers of America
Committee of Industrial Organization
Maritime Federation of the Pacific
San Francisco District Industrial Union Council
International Labor Defense of the United States

May 3, 1940

BY SPECIAL MESSENGER

Alaska Salmon Industry, Inc.
230 California Street
San Francisco, California

Gentlemen:

In answering your communication of May 3rd, we re-iterate our proposal as outlined to you 4:30 p.m. yesterday.

(Testimony of Paul St. Sure.)

We are not in a position to offer any other statement.

Yours very truly,

[Seal] MAURICE WHALEY

M. Whaley, Negotiating Committee Chairman

MW:D
uopwa—34

Received May 3, 1940 4.50 P.M. Messenger boy.

Eat More Canned Salmon—Packed Under Union Conditions
(Union label)

A. Also, on the 3rd of May there were meetings with representatives of the American Communications Association, a meeting with the Committee of the Marine Cooks and Stewards, and a meeting with representatives of the Marine Firemen and, I believe also on that day, we received a copy of the memorandum which is already in evidence under date of May 2nd a memorandum Mr. Cayton sent out to all the unions and, likewise, to the packers containing an outline of the unions position as of that date.

By Referee Roden:

Q. You say that is in evidence?

A. It is already in evidence, I believe, as an Exhibit of the Claimants. Shortly in the afternoon, around one to one-thirty in the afternoon I received

(Testimony of Paul St. Sure.)

a telegram from Mr. Brewer, Chairman of the Maritime Labor Board, Washington, which is similar in tone to the one which was already introduced in evidence by claimants wherein the services of the Mediator of the Maritime Labor Board were offered.

Mr. Madison: I won't introduce that telegram because it is substantially the same as the one Mr. Cayton got.

A. In reply to that a telegram was dispatched to Mr. Brewer stating there was not much time left to solve the questions that were giving us difficulty, but that if the Mediator desired to assist he could assist in the short time remaining, but it was impossible for us to extend the time we had established as the last date upon which or before which it would be necessary to reach an agreement.

Mr. Madison: I ask that this telegram dated May 3rd to Mr. Brewer, signed by Paul St. Sure, be introduced in evidence and marked Exhibit EE.

(Received in evidence as Respondent's Exhibit EE.)

CANNERY CO. EXHIBIT EE

Western Union Telegram

May 3, 1940

To Robert W. Bruere
Chairman Maritime Labor Board
Washington, D. C.

Retel this date deference Alaska Salmon Industry, negotiations public announcement was made last

(Testimony of Paul St. Sure.)

week operations could not be undertaken unless union agreements reached by midnight tonight. Not much time left for attempting to resolve questions but we are still meeting and will continue to do so up to the time announced. If mediator can assist in brief time remaining we will welcome his services but extension of time limit impossible at this late date.

ALASKA SALMON INDUSTRY, INC.
J. PAUL ST. SURE.

Q. Were there any meetings on the 3rd?

A. I have already indicated the meetings we had with the several unions. However, about the time the telegram was received from Mr. Brewer and the reply dispatched to him, which was shortly after noon of the 3rd, Mr. Gertz came to the office of the Alaska Salmon Industry, Inc., and I showed him the reply which I had sent to Mr. Brewer and told him we would be very pleased to have any suggestions or services that he could offer, and after talking with him for a very few moments he stated to me that he was going to leave our office and communicate with Mr. Cayton or with others of the Maritime Federation and endeavor to arrange a meeting [146] for later in the afternoon. My recollection is that later that afternoon, around four o'clock, Mr. Gertz and Mr. Cayton met with Mr. Moore and with me and at that time we reviewed and discussed the negotia-

(Testimony of Paul St. Sure.)

tions that had been in progress. We discussed the demands of the unions which had been received by us and the counter proposals and endeavored to analyze the differences which existed between the unions and the operators. As Mr. Cayton has stated, the statements were made that the principle point of difference was the difficulty in connection with the Fishermens Union and the proposal which had been made, but that there were likewise very substantial differences involving a proposal made and discussed over a period of many days with the Marine Cooks and Stewards Union; and there were other differences including those of jurisdiction as well as those of cost which existed with a number of the other unions. We analyzed or attempted to item by item the contracts and counter proposals as I have stated. I outlined to Mr. Gertz the reason for the establishing of a date before which agreements should be reached and pointed out to him the experience of the previous years that the operators had had under which experience they had invested monies and supplies and equipment and cans and provisioning and preparing for a trip, and actually signing on workers, only to find that some union of the group had last minute demands which delayed the entire expedition under penalty of having to give in to, say, save its loss; and that policy had clearly been determined from the beginning of these negotiations and so stated to the unions we wanted to avoid that method of negotiating.

I pointed out the difficulty we had encountered

(Testimony of Paul St. Sure.)

wherein the Maritime Union Group had originally declined to bargain at all with us for a period of some days or weeks until certain claims had been paid. That we had lost considerable time in attempting to negotiate by reason of that. I discussed with them, also, the particular problems of overtime and conditions which we had encountered in analyzing the unions contracts and payrolls and the comparisons which had been made in connection with the conditions which were in effect out of Seattle, which in each instance were lower than those that were operated or permitted as a basis for operation in San Francisco.

Mr. Gertz endeavored to secure some further discussions with the Marine Cooks and Stewards to the end there might be some compromise made even at the last moment in connection with the differences we had with them. We discussed, I believe generally, the matter of the [147] difficulties we had in arriving at a memorandum agreement with the Alaska Cannery Workers Union; and in general reviewed the situation in its entirety, as I say, step by step and item by item and contract by contract. Mr. Gertz expressed, I believe, at that time his belief that the situation looked pretty hopeless but so far as he was concerned he would endeavor to make some further inquiries and have further discussions and would communicate with us later in the evening. The Fishermens Union, particularly, was meeting that night for a final meeting in connection with a proposal on fish prices. We had a further meeting

(Testimony of Paul St. Sure.)

with Mr. Gertz later that evening. Mr. Cayton was not present at that time. I believe he had been talking with Mr. Gertz in the interim. And again we spent, I think, two hours or more going over the various possibilities of reaching an agreement and discussing particularly the situation which past years had developed whereby the San Francisco operators were no longer competitive with the Seattle operators. They could not operate except at labor costs which would be extremely beyond or higher than those out of Seattle. That that was one of the principle sources of our difficulty and one of the principle reasons for inability to reach an agreement.

Mr. Gertz left the office, as I recall, around ten o'clock at night. We remained there until after the time established as the final time for any possible agreement, midnight. And, as I recall it, about midnight or thereafter we received telephone calls both from the representatives of the Fishermens Union and Marine Cooks and Stewards Union, that there had been a rejection of the agreement finally, and again, by the Fishermens Union and that the other unions, therefore, were not in a position to be able to complete negotiations with us.

That about completes the chronological story of the occurenees up to the 3rd of May, or that night.

Q. Is there anything that occurred after that time which you want to put into the record, Mr. St. Sure? Anything you consider material to this?

A. I don't recall anything that happened following that time.

(Testimony of Paul St Sure.)

There was no further communication and, so far as I know, to this day there has been no further communication with the Alaska Salmon Industry Office whatsoever or with the operators individually from any union. There has been only the information come to us that as the result of the negotiations in Seattle that an agreement was reached, as I have already testified, with the Alaska Cannery Workers Union at Seattle, upon the express condition that that agreement [148] which is rather generally in line with 1939 Seattle contract with some slight modifications that that agreement was reached for Seattle and Portland operations upon the express representation there would be no operation out of San Francisco. That if one was attempted out of San Francisco that a separate contract would have to be negotiated for San Francisco operations.

Referee Roden: That is the statement you made here sometime ago.

A. Yes. I am just repeating that as the last record we had of any direct negotiations.

Mr. Madison: I have no further questions.

(Remarks were made off the record.)

Cross Examination

By Mr. Resner:

Q. Directing your attention to the last thing you testified to, Mr. St. Sure, and that is the meeting with Mr. Gertz and Mr. Caton on the night of May 3rd, you heard Mr. Cayton's testimony this morning, of course. Do you recall Mr. Cayton's making the statement at that time if he could get over the

(Testimony of Paul St. Sure.)

hump of this fishermens situation there would be no trouble with the other unions?

A. Well, he felt, as he expressed it, we were all thinking out loud, that the major difficulty was between the fishermen and the operators as well as the difficulty between the Marine Cooks and Stewards and the operators. And it was expressed by each of us—Mr. Gertz and Mr. Cayton and myself—that because the other differences seemed to be of so much lesser consequence it was reasonable to suppose if the fishermen would agree and the Marine Cooks and Stewards would agree the others probably would also. There was considerable discussion to that effect. But I don't recall any statement being made by Mr. Cayton as to what the other unions would do. It was simply reasoning out loud. In fact, Mr. Cayton expressed to me, as he did this morning, he had to be very careful in any expressoins he might make that would commit other unions.

Q. He did say if this Fishermens Union situation could be gotten over he didn't think any difficulty would be had with the other unions?

A. He expressed that as his belief.

Q. Do you recall at that time Mr. Gertz made the statement to this effect? That if this Fishermen situation were straightened out that he would recommend to the various San Francisco Unions that they execute the 1939 agreements out of San Francisco?

A. I don't [149] recall his making such a statement. He did have further discussions with the Ma-

(Testimony of Paul St. Sure.)

rine Cooks and Stewards and secured from them a last minute half-way suggestion. By half-way I don't mean disparagingly, but I mean lightly half-way on certain of the overtime proposals we had. He received that by phone on the evening of the night of the 3rd of May and we were still rather far on that despite his intervention in the last few hours on that situation. It wouldn't be consistent in my mind in view of the attitude expressed by the Marine Cooks and Stewards for him to have made the expression he would make the 1939 agreements. He might recommend them, but he expressed as in the Marine Cooks and Stewards, he would not execute the 1939 agreement.

Q. Well, let's leave the Marine Cooks and Stewards and Fishermen out of this thing excepting what you have just stated here as a fact, if those situations could be straightened out didn't he say he would recommend to the various other unions concerned, including the Alaska Cannery Workers Union, the signing on from San Francisco for operation on the basis of the 1939 San Francisco agreements?

A. Well, I don't recall his making that statement. As to most of the other unions concerned, I think that we were not very far apart in the connection with the 1939 terms, with the exception of the Cannery Workers Union. Our opinion has been they should sign a memorandum agreement agreeing to be bound with Seattle 1940 or Seattle 1939; and they have insisted upon San Francisco 1939, which we had indicated was not acceptable.

(Testimony of Paul St. Sure.)

Q. In other words, this whole matter can be summed up in that simply this union wanted the minimum of 1939 San Francisco agreement and the operators didn't want to give it?

A. No, I would say that wasn't quite as simple as that. The unions request to us were for increases over San Francisco 1939 ranging from three to, I think, some 9%, depending upon the various contracts that were submitted. We, in turn, said not only could we grant no increases in wages and operating costs, but that we would have to find, if possible, some means of reducing the labor costs, which meant we wanted reductions, at least, into some of the unions. Apart from that, however, there were many and not inconsequential demands for changes in conditions and clarifications which had to do directly with method of operation, upon which we were far from agreement; although, I agree that they were of less consequence to us than the matter of actual out of pocket dollar cost that went out of payroll. However, they were matters of consideration and the sole difference, therefore, [150] was not the question of dollar costs alone.

Q. Let me put the question this way. Did the operators ever offer to reexecute for 1940 the 1939 contract for the Alaska Cannery Workers Union of San Francisco? A. No.

Q. On the other hand, did the union negotiators on more than one occasion offer to the packers to make the expedition this year out of San Francisco on the basis of San Francisco 1939 agreements?

(Testimony of Paul St. Sure.)

A. No. The situation was this. Prior to April 1st the Cannery Workers Union submitted to us a contract which was in excess of our 1939 San Francisco contract. On April 1st they withdrew their negotiations from San Francisco entirely and took them to Seattle. The only offer that they made to us was at the very end of the road on the first, second, and third of May, 1940, wherein they said that they would take either Seattle 1940 or San Francisco 1939, whichever were the better, which was a direct violation of the understanding we believed we had with them for a uniform contract out of San Francisco, Seattle, and Portland, 1940.

Q. They would not go out of San Francisco for less than 1939 San Francisco agreements?

A. They would not, until the final day or two's discussion that I mentioned; and then only if you can draw the inference. They would not accept, rather, a Seattle contract, which was less than San Francisco, in any event. They said to us they would take whichever gave them the greater benefit, which was not the basis of negotiations as we understood. They caused the negotiations to be removed from San Francisco to Seattle.

Q. Well, in any event, it was clear from that that the minimum the union wanted out of San Francisco was the 1939 San Francisco Agreement?

A. At that time it was, yes, sir.

Q. I want to draw your attention to the letter of April 3rd, which is in evidence as Canners Exhibit I. In that letter, referring to page 5, you list

(Testimony of Paul St. Sure.)

your proposals to the various unions and you list your proposal No. 2 addressed to the Alaska Fishermens Union wherein you state, "For Central Alaska operations the 1939 agreements will be renewed provided that modifications heretofore negotiated shall be reduced to writing and included in the agreement; and provided, further, that the provision for penalty of $75.00 if the men leave be eliminated. It is understood, further, floating equipment shall be handled both on and off Chignik—that proposal, of course, you were [151] only making an offer to the Fishermen for Central Alaska. This has nothing to do with Bristol Bay.? A. That is correct.

Q. Now, with respect to Bristol Bay Operations Packers Proposed: Reduction in wages, over the price of fish in 1939, did they not?

A. That is correct.

Q. Can you tell us what that reduction amounted to? How much?

A. Two and a quarters cents a fish.

Q. That is last year. The price of fish was what in 1939?

A. Fourteen and a quarter—and, I believe, the proposal was twelve.

Q. And the proposal this year was twelve cents?

A. Correct.

Q. Now, the agreement that ultimately has been reached in Seattle between the Alaska Fishermens Union and the packers was reached on the basis of the 1939 price, was it not?

A. I understand it was, yes.

(Testimony of Paul St. Sure.)

Q. In other words, the Chignik and Karluk fishermen got what they wanted and the Canners gave the fishermen what they asked for with respect to fish prices this year?

A. With respect to fish price, yes.

Q. I want to draw your attention for a moment, now, to the operation of the Alaska Salmon Company. I believe in your direct testimony you stated the Alaska Salmon operated only at Bristol Bay?

A. Correct.

Q. In other words, they have no operations in Central or Southeast Alaska, either Chignik or Karluk? A. That is correct.

Q. Isn't it a fact, Mr. St. Sure, that the agreement for the Bristol Bay operation is generally reached sometime in May of each year between the Packers and the Unions?

A. I couldn't testify as to this. I don't know.

Q. Directing your attention to the question of the curtailed season, isn't it a fact that one of the reasons why the operators were asking for the reduction in the contract agreement, that is, with respect to wage scales and other matters which might have increased the operating cost for this year, is due to the fact this is a curtailed season in Alaska?

A. Well, there was considerable difference of opinion just as Mr. Vegen expressed both opinions —supposed to be a light season. The fact that the season was to be curtailed did, I feel, influence the packers in taking a closer look at their costs, and when they made the analysis they found they were

(Testimony of Paul St. Sure.)

losing about fifty cents a case on the fish they packed under present operating costs. I suppose the additional hazard of having a short catch might have influenced them in their reason, but not to the extent they didn't want to go fishing. [152] They wanted to try on a chance that would give them a chance of breaking even on a hazardous business.

Q. So, fishing is a hazardous business even in Alaska as every place else?

A. So I have learned.

Q. But, with respect to the negotiations with the Alaska Cannery Workers Union, your negotiations here in San Francisco were predicated upon the fact that the costs had to be reduced below what was paid this union out of San Francisco if there was going to be any season at all?

A. Now, as to the Cannery Workers Union we were satisfied, I take it, both from the course that was followed by us as well as by the discussions I had with the Packers to take our chances on having at least no worse a deal than they got out of Seattle.

Q. The Alaska Cannery Workers never declared any strike against the operators, so far as you know?

A. Not that I know of. There was no operation to be struck.

Q. No operation to be struck, in other words. And, directing your attention to the operation in Central Alaska this year prior to the time when this season opens, I think it is around the middle of April, is it not, that ordinarily it would have opened? That is, your operation in Central Alaska?

(Testimony of Paul St. Sure.)

A. There would have been sailings.

Q. Sailings would have been around the middle of April. In any event, prior to that time you had no workers employed in any of your plants in Central Alaska?

A. Not to my knowledge. There may have been watchmen or some others there, but I am taking it by ear. I don't know as to that.

Q. And the same is true with regard to the Bristol Bay operation? A. I assume so.

Q. Mr. Resner: Can I have about five minutes, Mr. Referee, to check these letters?

(At 3:50 p.m. a five minute recess was taken.)

By Mr. Resner:

Q. Mr. St. Sure, directing your attention to this question of wage claims, you testified that one of the first things the union asked before they entered into negotiations for a contract was last years wage claims be settled. Can you tell us what that is?

A. Well, there were a number of claims involving —I say a number, there were several, I don't recall how many—six or eight, perhaps, involving several [153] unions having to do with disputes over time or questions of interpretation of contract, that his men were paid at one rate and they claim were entitled to work at another rate. There were claims over that, largely claims of spite, disputed overtime. I believe they all were with the exception some of the Alaska Salmon were not settled.

Q. Now, this question of wage claims being discussed this year before the contracts were negotiated

(Testimony of Paul St. Sure.)

is not anything unusual in this industry, is it? The same happened last year did it not?

A. I had nothing to do with it last year, so I can't state. I don't know.

Q. Do you know anything about whether or not the Alaska Packers are operating their traps this year in Central Alaska?

A. That I can't state. I don't know.

Q. You identified a letter, which is the Packers Number C, from the union, dated November 8, 1939, and addressed to Mr. Tichenor, advising the Alaska Packers that Local No. 5, Alaska Cannery Workers Union, had been designated by N.L.R.B. as the bargaining unit and was ready to negotiate. Do you know whether a reply had been had by the Alaska Packers Union? A. I do not, no.

Q. Directing your attention to the Bristol Bay operations you testified that it was your impression that out of Seattle the wages were less to the workers than they were out of San Francisco. Now, is your impression that that applies to the Alaska Cannery Workers Union out of San Francisco?

A. It does. I would like to correct or, rather, amplify that answer by stating that my understanding is that the basic rates insofar as cannery workers wages are concerned are comparable or about the same, but that the difference in the cost of operations out of San Francisco as against Seattle, the costs out of San Francisco being higher, have to do with the Culinary Department which is handled by and manned by the Alaska Cannery Workers, and that

(Testimony of Paul St. Sure.)

the differences in both conditions, as to number of men required to be employed and amount of overtime required in a contract and general resulting costs, is higher out of San Francisco than it is out of Seattle. I am referring to Bristol Bay now.

Q. Yes. But the wage scale for the Cannery Workers, both AB and B classifications out of San Francisco and out of Seattle is the same?

A. I believe that is correct. The comparison of contracts will show that, but I believe that is correct.

Q. You made some comment on your direct examination to the matter [154] of nurses, watchmen, and similar classifications which they Alaska Cannery Workers Union, Local 5, was demanding jurisdiction for?

A. I think I mentioned particularly nurses. The watchmen I mentioned in connection with the sailors union and fishermens union. My recollection is the Cannery Workers specifically discussed with us nurses, orderlies, and embalmers, I believe. I don't recall we executed it. In fact, I remember stating to the Cannery Workers Committee if they represented those people and those people were members of their union so far as I was concerned that was the end of the matter; however, the discussion that occurred in connection with that was that the entire negotiations be moved to Seattle, and the only discussions we had were when late in the game, along the forepart of May, the union requested specific agreements be reached for nurses. We felt it

(Testimony of Paul St. Sure.)

should all be Seattle or none, although we then asked Daily men be here.

Q. But so far as your negotiations with the Alaska Cannery Workers Union were concerned the question of who represented these nurses, watchmen, and so forth, never was a stumbling block to your arriving at an agreement?

A. Only insofar as I mentioned, the question of where the contract was to be negotiated, which might be over them. It was not a question of who claimed them or who they were affiliated with.

Q. In other words, the negotiations were transferred to Seattle, but the Packers recognized this local represented these workers, these classifications?

A. I have no reason to question it insofar as I was concerned. If the claim was made these people belonged to the Cannery Workers Union that was no business of ours. They could belong to what they pleased.

Q. The only point I want is that was never a stumbling block or anything preventing agreements from being consummated for the current season?

A. Only so far as it came in the picture when we endeavored to secure this memorandum agreement covering operations out of San Francisco. When we asked for Seattle 1940 or Seattle 1939 the union wanted something else. They wanted Seattle 1940 or San Francisco 1939 and also——

Q. (Interrupting) Depending on which was the better contract for the union?

A. Yes. Also requested that we specifically rec-

(Testimony of Paul St. Sure.)

ognize their jurisdiction over the nurses, as I remember, and agree they be covered by the contract. Our position was that was a matter to be negotiated in Seattle, but we didn't either reject or accept that claim of [155] jurisdiction; although, previously, I had stated to the union although so far as we were concerned the question of representation was up to the employe.

Q. And that was transferred to Seattle for negotiations?

A. I assume it was transferred long before, and I assume it was settled in whatever contract they reached up there. In any event, it didn't affect us because there was this proviso in the final settlemen, of the settlement I referred to before, if we had operations out of here we would still have to negotiate a contract out of San Francisco.

Mr. Resner: I want to offer at this time. I don't think it will be necessary to put Mr. Woolf on the stand or any of your people, because it is admitted, a letter to which the union sent to all three of the member concerns of the Alaska Salmon Industry that they represented these particular classifications, and were so certified before the Labor Board.

A. I don't recall seeing such a letter.

Q. It was sent in January.

A. I know of no discussion had concerning it, except what I mentioned to you.

Mr. Madison: I don't think the letter is relevant.

Mr. Resner: I only offer them because of the fact

(Testimony of Paul St. Sure.)

I want to clear up any inference drawn from any testimony the question of who represented these workers had anything to do with the inability or failure to arrive at agreements for the 1940 season.

Mr. Madison: That letter wouldn't have any application to that. It is just a statement. You want to prove they were certified. Why don't you produce the certification?

Referee Roden: Is there any contest on the proposition whether or not the Cannery Workers Union was authorized to be the bargaining agency?

Mr. Madison: Absolutely none, so far as I am concerned.

Mr. Resner: So far as that is concerned, then, we won't have to have those letters go in.

Mr. Madison: I just don't know whether they are or not.

Examination by Mr. Resner:

Q. Well, then, after the wage negotiations were transferred to Seattle the Union continued to negotiate here with you for Manning Scales and other matters having to do with the operations out of San Francisco?

A. Manning Scales and the physical set-up—porters, and so forth, supplies, hospital requisitions, and so forth—on matters which had to do with the physical equipment and supplies [156] and Manning Scales.

Q. Well then, Mr. St. Sure, in connection with all these negotiations with the Alaska Cannery Workers Union of San Francisco they had at all

(Testimony of Paul St. Sure.)

times stated they were ready, willing, and able to go and wanted to go to Alaska this season, did they not, on the basis of at least the 1939 San Francisco Agreement.

A. I don't know quite how to answer that. They stated they wanted to go on the basis of agreements that was to be negotiated in Seattle. They stated they wanted that agreement to be as we said we wanted it to be, coastwide in application so there would not be any unfair or undue advantage or disadvantage to any operator. We particularly wanted that because attempts had been made the previous year, I understand, to have the same thing without success. We then felt that we had to have an agreement with the Cannery Workers Union whereby there would be a coastwise agreement negotiated in Seattle, and we came up to the point of endeavoring to get the Local Union No. 5 to affirm it. We found that they were unwilling to affirm it except upon terms they would dictate, which was despite what Seattle might negotiate they still wanted San Francisco negotiations if they were higher based upon 1939; and, in view of the fact the previous year there had been a similar agreement to go on coastwise basis, which was repudiated by the San Francisco operators we didn't feel they were offering anything *exept* failure to reach agreements they had previously agreed to go along on.

Q. In other words, though, it was always clear to you they wanted at least what they had last year?

(Testimony of Paul St. Sure.)

A. As I say, that was made very clear to us in the last few days of negotiations . . .

Q. And on that basis—I didn't mean to interrupt you. Pardon me!

A. I say, when for the first time we found they were not willing apparently, to go along on coastwise agreements negotiated in Seattle but wanted to do the same sort of thing that had been done the year before, go up to the point of agreeing to a coastwise agreement and then endeavor to again put San Francisco in the position of being higher than the other operators.

Q. But it was always clear to you, was it not, they would go and wanted to go on at least the 1939 San Francisco agreement?

A. It was so indicated at the end of the road with this excepion. They said "We will go on San Francisco 1939 unless Seattle gives us better than San Francisco 1939, in which event we will take the better of the two. That is the final position. [157]

Q. Of course, that position was made known to you before your final deadline?

A. Yes, the last day or two—3rd of May, I believe, we had a letter stating, "that is our final position", on the day of the deadline.

Mr. Resner: I think that is all.

Redirect Examination

By Mr. Madison:

Q. May I ask a question? Mr. St. Sure, you are testifying here under direct examination in regard to your negotiations you conducted with the Union;

(Testimony of Paul St. Sure.)

I think, the period of those negotiations ran from sometime in March and down to sometime in about May 3rd. Now, during that period did you have meetings from time to time with the people that you represented? With the executives of the three canning companies whose names have come up here?

A. Practically daily, both before the 1st meetings with the Unions on the 7th of March and with the Maritime Federation and until and after the 3rd of May I met, Mr. Moore with me, with the executives or executive offers of the Alaska Packers Association—Mr. Barthold, Mr. Alvin Varthold, and Mr. Tichenor, and with Mr. Peterson of the Red Salmon Canning Company, and Mr. Fleager of the Alaska Salmon Company, and others in that organization.

Q. And now with reference particularly to the claim made here that these negotiations were not bonafide, that these canners never intended to go, and these negotiations were simply, if I may use the expression, "window dressing". What, generally speaking, occurred at these various meetings with regard to their willingness or wish to go to Alaska this year?

A. The discussions which were frequently had turned to the question of what the result would be of failure of negotiations; and each of the operators, with the exception of the Alaska Salmon people, after or about the time they finally announced they would have to abandon their opera-

(Testimony of Paul St. Sure.)

tion because of the difficulties they would have had expressed a desire to go fishing and endeavor to make an expedition for the reason they had monies invested in plants, boats, and equipment, which would be a total loss to them in the event they were not able to go fishing. A matter of discussing of the possibility of chartering ships was gone into, and in each instance the ships that were required for the operations of Central Alaska as well as operations for Bristol Bay were actually withheld from charters which were available at that time. In other words, that they might be available to go fishing with the resultant loss to the [158] companies of salvage, at least, of many thousands of dollars; which so far as I know, to this day they have never attempted to secure because they wanted the ships available for the purpose of completing the expeditions and going fishing this season.

Q. Did you discuss with them in respect to these letters that were written? I think the first was dated April 3rd and the second one with regard to the Bristol Bay operation sometime later. *In* April 26th in discussing the sending of those letters did you have talks with them in regard to why it was necessary to send those letters at that time with respect to the purchases they had to make? With materials and plans they had to make if the expedition was to sail?

A. Yes. Those matters were discussed on many occasions. The question was first raised, I believe, in discussions as to how we could avoid the past

(Testimony of Paul St. Sure.)

practices I understood had occurred, having as I have mentioned, these last minute demands made—that is, after ships had been outfitted and after equipment had been purchased and after some of the men had actually been signed on one or the other of the unions would come up and demand for additional men to go on board or for additional wages or additional conditions. The previous season, I believe, there was actually a strike at the yard of the Alaska Packers which held up their getting away; and, I think there were other strike actions or last minute demands which delayed sailings to later than safely the ships could get away. In order to avoid that, as we indicated in our first letters to the union, we were going to endeavor to reach union agreements prior to the times complete commitments were made for purchase of supplies and outfitting of this expedition so we wouldn't have a loss in the event these agreements weren't finally consummated; and an announcement was made, without allowance for storm or accident, which would allow us to get away the last possible day from San Francisco without allowing a safety factor to make and complete the expeditions to Central Alaska. A limited number of days was allowed for the provisioning of the ships and equipping them and the purchase of supplies, perhaps less than the time in accordance to the operators statements to me than safely could be allowed, with the idea we would have everything completed in the way of agreements before we would risk further

(Testimony of Paul St. Sure.)

investment for the outlay of these supplies, and so on, in connection with the Central Alaska operation. That was worked out on that basis. And in connection with the Bristol Bay operation that [159] was the same formula and procedure. Indeed, I recall Mr. Peterson of the Red Salmon Company felt the date of May 3rd set for Bristol Bay operations was not a safe date; that it was too late. And he felt that the 1st of May should be the last possible date upon which they safely could undertake to complete preparations for the operations of Bristol Bay.

Previous years experiences, as I say, were reviewed. However, the concensus of the two operators then concerned with Bristol Bay—Alaska Packers and Red Salmon—was in view of the fact the Fishermens Union did not meet on the last possible meeting they could have to consider this proposal until the 3rd of May, they having once considered it and rejected it, the deadline should be extended to the 3rd of May, midnight, so they could have this last meeting in order to finally consider the proposal made without the acceptance of which there could not be operations at Bristol Bay. So, in each instance, dates were set solely upon the basis of establishing a time beyond which it was not safe to plan to complete the investments and preparations of the expedition and dates before which it was necessary agreements be reached with the unions if we were to avoid the

(Testimony of Paul St. Sure.)

same type of last minute worse demands that had been experienced the previous season.

Q. Was anything said at any of these meetings you had with the packers that would indicate or imply in any way these negotiations were not bona-fide? A. There was none.

Q. Was there anything to indicate that so far as the Alaska Packers Association was concerned or the Red Salmon Canning Company was concerned or the Alaska Salmon Company prior to the date with regard to them that you have mentioned that they did not intend to go fishing and would go fishing and could go to Alaska with an expedition from San Francisco in the event a proper labor arrangement could be made with the unions involved?

A. Every evidence that I had in addition to the statements that the operators, themselves, made to me which, I believed, indicated a desire to go fishing and, indeed, had made partial preparations to complete their expeditions. There were some monies expended, equipment purchased, nets bought, cans purchased. There were some supplies and machinery purchased beyond that in preparation for the season of 1940, and those expenditures amounted to many thousands of dollars, in anticipation of an actual operation in 1940. [160] The ships in addition that I have mentioned that were to be used for those expeditions were not chartered, although attractive charters were available.

Mr. Madison: That is all.

(Testimony of Paul St. Sure.)

Recross Examination

By Mr. Resner:

Q. Mr. St. Sure, referring to this statement a moment ago that last minute coercive demands had been made by the union, no such demands were made this season, were they?

A. For the reason that I feel the operators took the position they would not attempt to complete their preparations for expeditions until there had been a commitment reached; therefore, no opportunity for such demands to be made alongside the ships, because the ships weren't prepared for sailing.

Q. But, in any event, the operators had known for a long long time what the unions would sign for? That is, Local 5 of the Alaska Cannery Workers Union?

A. As I said, they come in on the 3rd or 2nd of May. It was, the day of the time we had set as the last safe date for making preparations.

Q. They renewed the original demands as being the most they wanted?

A. We knew they had requested an increase over 1939 conditions and we felt the 1939 conditions were already so excessive we wouldn't operate at a profit.

Q. But in any event, when that 1939 agreement was presented to you you knew that was the most the unions wanted?

A. We knew that was what they wanted at that time, yes, sir.

(Testimony of Paul St. Sure.)

Q. And that was, oh, five or six weeks prior to the Bristol Bay expeditions old starting date, was it not?

A. I would say it was approximately a month before. The 27th of March, as I remember it, is when the demand was presented to us, and withdrawn on the 1st of April.

Mr. Resner: That is all.

Examination

By Referee Roden:

Q. Mr. St. Sure, why did the Alaska Salmon Company quit?

A. You missed the statement made to me. They had financial problems which didn't permit them to make the arrangements financially for outfitting for Alaska for 1940. They had financial troubles, among which were the fact that the operations the previous season had been a loss and a contributing factor in that they believed the excessive labor costs plus their own financial difficulties made it unwise for [161] them to attempt operations.

Q. It wasn't due to labor difficulties?

A. Except in the sense I mention. That was one incident, one factor only.

Q. Now, are you acquainted with the conditions of the Salmon market at the time these negotiations took place around about on the middle of April, or thereabouts?

A. I am not, sir. I prefer one of the Alaska operators testify to that. I think they are better

(Testimony of Paul St. Sure.)

qualified, and I haven't the information except by ear.

Referee Roden: Any further questions, Mr. Resner?

Mr. Resner: None for me.

Mr. Madison: I have no further questions.

(Remarks were made off the record.)

Mr. Resner: I want to ask you this, Mr. Madison, will you call Mr. Fleager?

Mr. Madison: He won't add anything to my case. Do you want to call him?

Mr. Resner: The only point I wanted to bring out from Mr. Fleager was the letter wherein it is indicated, at least in my construction of these letters, Alaska Salmon had other reasons for not going fishing than any labor difficulties. You will so stipulate to that?

Mr. Madison: I will stipulate to what Mr. St. Sure said. Or, if you want to make any broader stipulation write it out and let us take a look at it?

(Remarks were made off the record.)

Mr. Oliver: On these two lists of persons supposed to be employes of Alaska Salmon Company in 1939 it was admitted solely for the purpose, I think, of indicating their records show these members were employes. It was admitted. I said I wanted the opportunity to check it. Now, it has been checked with respect to the long list upon which there are 250 names. I find that one man has since died, he being No. 245 on the list, Richard

Throll. That No. 207 had no earnings from us. He apparently spent his whole time in Alaska in Jail. No. 230, who is J. Varela, does not appear on our payroll. And No. 107, Joe Rendon does not appear on our payroll. [162]

We have three Rendons, I believe, on this list.

Then, on the shorter list entitled Woodriver Personnel of 1939 Season, No. 14, Charles Roth Wyler worked for the Company in San Francisco prior to going to Alaska, and he worked for the Company in San Francisco upon his return from Alaska and he worked sometime in September, 1939; and since that date he has worked elsewhere in San Francisco or California. No. 34, Mike Martin, has, likewise, been employed in California since the end of the 1939 season. Otherwise, the list checks with our payroll, except for some minor errors, apparently in spelling.

Mr. Resner: So far as No. 14, Charles Roth Wyler, and also Mike Martin, No. 34, the point you are making is that they weren't employed by you in Alaska but they also worked in California after they returned from Alaska?

Mr. Oliver: Yes, Charles for us and Mike Martin for somebody else.

Mr. Resner: They didn't work during April of this year or May this year?

Mr. Oliver: Not for us. I do not know whether they are working for someone else. My understanding is they are working for someone else.

Mr. Resner: But they are not working for Alaska Salmon?

Mr. Oliver: No, they are not.

Mr. Resner: Of course, they wouldn't be eligible for benefits if they are working now under any circumstances.

(At 4:30 p.m. the hearing was adjourned to reconvene Wednesday, 9:00 a.m., June 19, 1940.)

EXHIBITS

Statement

Mr. Resner: Let the record show that Exhibit No. 1 is changed and the following appears as Exhibit No. 1: The letter from Anderson and Resner signed by George R. Anderson, May 11, 1940, addressed to the Alaska Unemployment Compensation Commission, regarding the claim of Frank L. Aragon, Social Security No. 571-09-8139, which is presently Exhibit No. 5. That is changed to No. 1. And, also No. 5, the letter to the Alaska Unemployment Compensation Commission [163] of May 14, 1940, signed by Sam Young, Secretary of Alaska Cannery Workers Union—that is changed to No. 1.

Let the record show further that the list of Claimants numbered 1 appears as follows: Sheet 1 begins with the name Sing Tom, No. 567-16-7833; Sheet 2 first name is Clarence Davis, No. 566-03-1697; Sheet 3 first name is Chan D. Tsue, Social Security No. 561-05-8489; Sheet 4 first name is John Harris, No. 566-12-5381; the first name on Sheet 5 is Tiburcio Y. Vios, No. 566-16-1781; Sheet

6 first name is Yen Shoo, No. 571-01-6641; Sheet 7 is Joe Corry, Social Security No. 572-03-0323; Sheet 8 first name is Frederick Cordova, No. 566-14-6010; Sheet 9 first name is Toshizo Asari, No. 547-03-2338; Sheet 10 first name is Chi Saw, No. 566-16-7832; Sheet 11, Maximo Lucerna, No. 566-05-0556; Sheet 12 first name is Wilbur Burton, No. 566-01-2044. All of those, then, become Claimant's Exhibit No. 1. And in this regard, Mr. Examiner, I would like to have this case entitled Frank L. Aragon, and all the other Claimants whose names appear on the sheets; and, also, the Alaska Cannery Workers Union No. 5 of San Francisco on behalf of these Claimants.

Then Exhibit No. 2, Claimants Exhibit No. 2, which was formerly No. 1, is changed to No. 2; and it is the letter from the Alaska Salmon Company of April 30, 1940, signed by Mr. Fleager, to the Alaska Cannery Workers Union. (Indicating.)

And I am making former Claimant's Exhibit No. 14 Exhibit No. 2 (a), being the list of employes of Alaska Salmon Company during 1939; and there are three sheets to this 2 (a)—the first one, Sheet No. 1, carries the first name Vincente Rendon; Sheet 2 the first name is Manuel Molix; and Sheet 3 the first name is Albert Sanchez. In other words, there is no longer any No. 14. No. 14 has become 2 (a).

All the others remain the same. [164]

Wednesday Morning Session

(At 9:00 a.m., June 19, 1940, the hearing was reconvened by Referee Henry Roden.)

AUSTIN K. TICHENOR,

The Alaska Packers Association, 111 California Street, San Francisco, California, being duly sworn testified as follows:

Direct Examination

By Mr. Madison:

Q. Mr. Tichenor, you are an officer of the Alaska Packers Association, are you not?

A. I am.

Q. What office?

A. Vice-President and General Manager.

Q. And you have held this office for sometime past? A. I have.

Q. And you are the man, the executive of the organization, most familiar with the expedition that yearly takes place to Alaska? Or has for a number of years past up to this year?

A. I am.

Q. Now, Mr. Tichenor, you are the man representing the Alaska Packers Association who Mr. St. Sure referred yesterday to in his testimony?

A. I am.

Q. And you were in during the season over negotiations from sometime in March until sometime in May? You were the representative of the Alaska Packers Association with whom Mr. St. Sure conferred with regard to his negotiations with the union in connection with the trip to Seattle? Is that correct? A. I was.

Q. Now, Mr. Tichenor, did the Alaska Packers Association at that time make provision for and did it intend to go in 1940 to Alaska?

(Testimony of Austin K. Tichenor.)

A. We did.

Q. And referring specifically to the earlier trip, the Chignik and Karluk trip, what steps were taken to prepare for the expedition and for the operation of the canneries in Alaska generally?

A. We set aside a vessel for that purpose, our fastest vessel that was capable of making that trip.

Q. Which vessel was that?

A. The Steamer Cherakoff. We also purchased supplies and outfitted to the extent of nearly four hundred thousand dollars. Those supplies are still on hand in our warehouse here open for inspection, if anybody desires to see them.

Q. What are the nature of the supplies?

A. Cans, can ends, lumber, fiber boxes, caterpillar engines, stationary engines, and various machine tools, and so forth, that we might have difficulty in getting, or there might be some delay in getting. [165]

Q. Now, in connection with preparing for an opertion of this character is it correct to say that certain of the materials and supplies have to be purchased sometime ahead because of the difficulty of getting them, while others particularly perishables, particularly food, can be purchased within ten to fifteen days before sailing?

A. That is very true.

Q. Now, you spoke about cans and can ends. You bought those in considerable quantity for the operation this year? Is that correct?

(Testimony of Austin K. Tichenor.)

A. That is correct.

Q. And that material is on hand here in San Francisco Bay Area? A. It is.

Q. And in addition to that I assume that the Company has a certain amount of canned material in Alaska which could be used to augment the materials which are here, if you had had an expedition this year?

A. We have, both in Central Alaska and Bristol Bay also.

Q. Did you purchase any piling this year for use in connection with your fish traps?

A. We did.

Q. And did you purchase that in substantial quantities?

A. Yes, quite substantial quantities.

Q. Did you purchase lead for nets for this year?

A. We purchased lead and purchased linen nets.

Q. Did you purchase some Clark Truck Tractors? A. We did.

Q. And those were purchased for use in Alaska?

A. They were purchased for use in Alaska and are on hand here now.

Q. And aren't usable in your business in any other way except in connection with your Alaska Fishing Trip? A. That is all.

Q. When were those purchased, if you can recall?

A. They were purchased—the tractors were purchased, I imagine, in late March.

Q. In late March of 1940?

(Testimony of Austin K. Tichenor.)

A. 1940, yes.

Q. Did you purchase motors for can lines and switch boards, and so forth?

A. We did. We purchased what they call all the runways that connects up with modern cannery machines.

Q. And those were purchased in 1940 shortly prior to the time you would have gone on your trip if you could have gone?

A. They were, yes.

Q. Did you purchase boxes, shooks?

A. Yes, we ordered box shooks, but we didn't take delivery on them.

Q. You were able to cancel the order when you found you couldn't go? A. Yes. [166]

Q. Did you purchase lumber?

A. We did, and lumber is now on hand in our shipyard in Alameda and some of the various lumber yards we didn't take delivery on but have had to pay for just the same.

Q. Now, I think you spoke you had taken nets and, I assume, nets would include linen and cotton webbing?

A. It would include linen Gill nets for Bristol Bay and all the cotton webbing necessary for hanging traps in Central Alaska.

Q. And those were purchased this year with the idea of going to Alaska? A. This year.

Q. Did you purchase a fish scow?

A. We had a scow built on Puget Sound for Chignik, yes.

(Testimony of Austin K. Tichenor.)

Q. To be used in the operations of 1940?

A. Yes.

Q. Did you purchase some laundry machinery?

A. Yes, quite a lot of laundry machinery to be installed in the different laundries asked for by the various unions. And it had been purchased and we have it on hand.

Q. That was purchased in 1940, was it, for use in connection with the 1940 operations?

A. That was purchased in the Spring of 1940.

Q. Did you purchase donkey boilers?

A. Yes, we purchased a couple of them.

Q. For use in the 1940 operations?

A. Yes.

Q. Did you purchase a winch from the Robbinson Engineering Company? A. Yes.

Referee Roden: Have you a list of those items, Mr. Madison?

Mr. Madison: I will ask this question.

Q. Did you purchase winches from the Robinson Engineering Company? A. Yes.

Q. Did you purchase five caterpillars? And did you purchase a substantial quantity of fuel oil? And Rope? And quantities of blankets from the Utah Woolen Mills? In the Spring of 1940? And all also for the use of the expedition of 1940 if you could have gone? A. Yes, we did.

Q. And those materials are on hand and available for anybody to examine who wishes to?

A. They are.

Q. Now, Mr. Tichenor, you spoke of having one

(Testimony of Austin K. Tichenor.)

vessel ready and available to go, the fastest vessel ready and available to go to Central Alaska, is that correct? A. Tht is correct. [167]

Q. Did you have vessels available to go to the Bristol Bay operation?

A. We had two others available for Bristol Bay.

Q. And were the vessels which you had available ample to carry your men and cargo to conduct the operations in Alaska this year?

A. They were very ample.

Q. Did you charter other vessels of your fleet which you have used in the past for past expeditions to Seattle?

A. Did we charter additional?

Q. Other vessels that you have used in the past? I withdraw the question and ask you this question. Which vessels did you have available to go to Bristol Bay?

A. We had the Etolin, the Qekvichak, and Cherakoff on her return voyage from Central Alaska.

Q. In other words, your plan was to send the Cherakoff to Central Alaska and then to have her come back, and then she could go to Bristol Bay and carry additional cargo to help in that operation? A. That was our idea, yes.

Q. And you have two other major vessels in your fleet, do you not?

A. Yes, the Bearing and Delaroff, are vessels

(Testimony of Austin K. Tichenor.)

which have gone to Alaska in prior years?

A. They have, yes.

Q. And these vessels were chartered when?

A. They were chartered in early Spring, January and February, chartered out January and February of 1940.

Q. And by virtue of these charters they would not have been available to go to Alaska?

A. They would not have been available. We didn't figure on sending them to Alaska.

Q. And vessels you had remaining in your fleet, large and small, I think you have already testified to, were ample for the operation in Alaska?

A. They were ample, yes.

Q. Now, I want to introduce for the purpose of the record a list of the sailing dates of the Alaska Packers Association expeditions to Alaska in 1937, 1938, and 1939. I will show this first to Counsel.

Mr. Resner: These dates, Mr. Madison, you refer to are the days of different sailings to Bristol Bay? Three sailings to Bristol Bay, three different vessels?

Mr. Madison: That is my understanding. You can ask the witness that. [168]

I am just offering this, if your honor please, for the purpose of the background.

Referee Roden: What was the last Exhibit? BB, was it?

Mr. Madison: Double-E was the last one.

It will be Double-F, I think. (Indicating.)

(Testimony of Austin K. Tichenor.)

I think I better lay a slight foundation and ask the witness if this is a true and correct statement?

By Mr. Madison:

Q. Let me ask you, Mr. Tichenor if this Exhibit marked for identification Canners Exhibit FF is a true and correct copy of the sailing dates upon which the Alaska Packers Association sent expeditions to Alaska to the states mentioned during years 1937, 1938, and 1939? A. It is, yes.

Q. Showing dates sailed up, dates arrived up, dates sailed down, and dates they arrived at—that is correct, is it not?

A. That is correct.

Q. I ask this be introduced as Canners Exhibit FF.

(Received in evidence as Respondent's Exhibit FF.)

RESPONDENT'S EXHIBIT FF

SAILING AND ARRIVAL DATES—ALASKA PACKERS ASSOCIATION'S EXPEDITIONS TO ALASKA—1937, 1938, 1939

Year	Stations	Sailed Up	Arrived Up	Sailed Down	Arrived Down
1939	Karluk	April 23	April 30	September 3	September 10
	Chignik	April 23	May 2	September 23	September 29
	Bristol Bay	May 25, 26, 31	June 3, 4, 8	(July 30,	Aug. 6, 12, 14, 17
				(Aug. 3, 6, 9	
1938	Karluk	May 30	June 6	Sept. 19	Sept. 26
	Chignik	May 30	June 11	Sept. 9	Sept. 26
	Bristol Bay	May 29, June 1-2	June 10, 12	Aug. 10, 13	Aug. 18, 22, 23
1937	Karluk	Apr. 17	Apr. 24	Oct. 7	Oct. 14
	Chignik	Apr. 17	Apr. 26	Sept. 24	Oct. 1
	Bristol Bay	May 13, 15, 18, 23	May 23, 24, 26, 31	Aug. 7, 8, 9	Aug. 14, 16, 17, 18

(Testimony of Austin K. Tichenor.)

That is all, Mr. Tichenor.

Cross Examination

By Mr. Resner:

Q. Referring to these supplies, Mr. Tichenor, you purchased for the 1940 season, as you said. These are supplies you can use next season, are they not?

A. Yes, they can be used next year.

Q. You expect to use them next year, do you not?

A. Well, naturally, if we go to Alaska next year we would use them, yes.

Q. Well, you expect to go to Alaska next year, don't you? A. We hope so.

Q. Now then, directing your attention to last season, how many vessels did you use during the last season for voyages to Alaska?

A. 1939 we used all vessels except the Bearing. I don't think we used the Bearing in 1939, did we George?

Mr. Oliver: All our vessels except the Bearing.

By Mr. Resner:

Q. And that means how many, Mr. Tichenor?

A. That would mean three major vessels and the motor ship Quejack. I am not referring to the tenders like the Cannack and Kadiack and those, but the major vessels. [169]

Q. In other words, this year you expected to use one less major vessel than you used last year?

(Testimony of Austin K. Tichenor.)

A. No, we expected to use two. Yes, one less than last year.

Q. For instance, you say you didn't use the Bearing last year. You chartered that last year and this year, and you planned not to use the Delaroth this season?

A. We planned not to use the Delaroth this season.

Q. How many men do you generally use in the San Francisco operation in your Alaska plant?

A. Well, if we are working to capacity, including Central Alaska and Bristol Bay, we use about 2,200 people, I imagine.

Q. Out of San Francisco?

A. Out of San Francisco.

Q. Cannery Workers, that is?

A. That is everybody.

Q. And had you planned to use that same amount this year had you made the expedition?

A. No, this year owing to the restrictions by the government we were to use about 66 2/3% of our people in Bristol Bay. We had planned to use approximately the same number of people in Central Alaska.

Q. Now, could you reduce that to figures, Mr. Tichenor? Let us direct your attention first to Central Alaska. How many men would you have used this year had you gone?

A. In Central Alaska?

Q. In Central Alaska?

(Testimony of Austin K. Tichenor.)

A. I think we would have used a similar amount of people that we did last year in Central Alaska.

Q. Approximately how many cannery workers does that represent?

A. In Central Alaska you are talking about?

Q. Yes.

A. About 275, I imagine. I am speaking from my opinion. About 275, I imagine.

Q. Yes, all I want is as to your best knowledge. Do you know how many you used in Central last year? Cannery Workers? How many did you use in Central Alaska last season?

A. I think we used about the same. I am not quite sure.

Q. Directing your attention to Bristol Bay this year, you say you plan to use about two thirds of what you used last year in the Bristol Bay operation? A. About two thirds, yes.

Q. And how many did you use in Bristol Bay last year of cannery workers?

A. Let's see, I will have to add up the line and I can tell approximately.

Mr. Madison: Don't you fellows know? [170]

Mr. Resner: Yes, we know.

Mr. Madison: Well, what does the Secretary have it? Mr. Tichenor doesn't know off hand. Mr. Woolf?

Mr. Woolf: Nine hundred to a thousand men.

A. (Mr. Tichenor): I think about 940 in Bristol Bay.

(Testimony of Austin K. Tichenor.)

Mr. Woolf: Nine hundred to a thousand in both operations? A. (Mr. Tichenor): Yes.

Referee Roden: That is in Bristol Bay and in Central Alaska.

Mr. Madison: Mr. Woolf thinks it is between nine hundred to a thousand for the two operations together.

Mr. Woolf: All operations of this one company. That is correct.

Mr. Madison: Supposing the records show the answer is 880 in Bristol Bay? This is for last year, as I understand it. And 275, we will say, in Central Alaska?

Mr. Woolf: It will run around a thousand men for the one company.

By Mr. Resner:

Q. Then, to sum this thing up, for Bristol Bay you plan to use two thirds of the Alaska Cannery Workers crew? At Bristol Bay this year?

A. The idea was.

Q. That is, from San Francisco, Mr. Tichenor?

A. Yes. The fishing effort had been curtailed by the government 33 1/3%, and we would, naturally, have to reduce our outfit about 33 1/3%.

Q. Can you tell me how many lines you planned to run in Alaska this season from San Francisco?

A. Bristol Bay?

Q. First directing your attention to Bristol Bay.

A. Well, we planned to use about one third less

(Testimony of Austin K. Tichenor.)

than what we had the previous year. Now, I just don't recall the number of lines we worked the previous year.

Q. And the same is true, of course, of Central Alaska? A. No.

Q. In Central Alaska you planned to use what you did in last year? A. Yes.

Q. Directing your attention to Central Alaska, you have traps at that operation, have you not?

A. Yes, we have.

Q. Those traps are in operation this season, are they not?

A. They are not in operation this season.

Q. Not for your company, Mr. Tichenor, but aren't they leased [171] or used by the Pacific-American.

Mr. Madison: If your honor please, I don't see what relevancy this has to the thing. This may be in the manner of a business secret to the Alaska Packers. What relevancy has it to this?

Referee Roden: Confine yourself to the fact whether or not they are being operated by anybody.

By Mr. Resner:

Q. Are the traps being operated by anybody, Mr. Tichenor?

A. They are being operated under a form of lease to a man named Hofstad, and under an arrangement with the Alaska Fishermens Union at Seattle, I believe. I don't know the details.

(Testimony of Austin K. Tichenor.)

Q. In the Central Alaska operation, Mr. Tichenor, all you use is trap fishing there, isn't that correct?

A. No, it is not. We use trap fishing, and we use beach seining, and we use what they call set-netting or set-gill-netting—it is three different methods of fishing.

Q. With regard to that fishing, though, all of those traps and set nets have been leased out to another operator for this season?

A. We haven't leased any of the set-netting sites at all. The beach seine at Karluk has been turned over to the natives, gratis, to let them go ahead and fish in any way they see fit. And they will get the income from it, whatever it may be. We loan them the gear without any expectation of return.

Q. But then the traps, of course, have been leased out, as you previously testified?

Referee Roden: We have had that several times now. Let's get along, gentlemen.

By Mr. Resner:

Q. With regard to the canneries at Bristol Bay, what particular canneries did you plan not to operate this year?

A. Well, a great deal depended upon the arrangement we would have been able to make with labor, and we didn't intend not to operate any of our canneries. There are two locations for instance, in Bristol Bay. One is Ugasik, what we will call a one-line cannery.

(Testimony of Austin K. Tichenor.)

Q. Did you plan to operate that one-line cannery?

A. Wait until I get around to that please! And then there is Egogik—They work together—which is a three-line cannery. Now then, we had in view to operate Egogik on what they call a two-line basis; however, we would [172] possibly have fished in Ugasik and taken Ugasik fish to Egogik, with the result we would start the third line Egogik but not operate any lines in Ugasik. However, the same number of souls would have been employed.

Q. Well, then, how many canneries do you have at Bristol Bay, generally manned by workers from San Francisco?

A. We have seven canneries in Bristol Bay.

Q. How many of those are operated by cannery workers in San Francisco?

A. They are all operated from San Francisco. In fact, all our canneries all over Alaska are operated by San Francisco and by San Francisco Cannery Workers.

Q. Would you give us the names of those canneries, Mr. Tichenor? And you might have to spell them so the Reporter could get them, because they are odd names.

A. Well, we will take them geographically: Nshagak; Kvichak, Diamond-J after that; Kvichak, Diamond-X; and Naknik, Diamond N; Egegak, Diamond-E; and Ujshik, Diamond-U. Now you understand, there are other canneries we have that

(Testimony of Austin K. Tichenor.)

we do not operate; but we keep them as in the case of disaster to start them up.

Q. This is all in Bristol Bay, now, we are talking about?

A. These are the canneries we usually operate in Bristol Bay. We have other canneries.

Q. I am just talking about the Bristol Bay operation. A. That is all.

Q. Directing your attention to the canneries whose names you have just given can you give us your best judgment of what your plans were as to which of these canneries you planned not to opate this year?

Mr. Madison: He testified he planned to operate all of them.

Referee Roden: Yes.

Mr. Resner: Let the witness answer, Mr. Madison.

Mr. Madison: Don't mislead him by the question, deliberately mislead him, and expect us not to object.

Mr. Resner: I am not trying to mislead the witness, and I am sure Mr. Tichenor is quite able to take care of himself.

Referee Roden: I think it is too much repetition. That is the only objection I have.

Mr. Resner: The point is this, Mr. Referee, obviously there was curtailment that had nothing to do with the labor dispute; [173] and what I wanted to do was get those canneries which were not go-

(Testimony of Austin K. Tichenor.)

ing to operate so those men that worked there last year are unquestionably entitled to benefits.

Referee Roden: The witness has testified the Company expected to operate them all, isn't that right?

Mr. Resner: I don't know. I want to find out whether or not that is the case.

Referee Roden: You asked your question once and he said he was going to operate them all.

Mr. Resner: Are you going to permit me to develop this line of questions?

Referee Roden: Go ahead. I am trying to have you bring out every point you have, but there is no use in asking the same question a dozen times.

By Mr. Resner:

Q. That is what I am trying to bring out. Let's try this one point with respect to these Bristol Bay Canneries you have just mentioned, are any of those canneries that you plan not to use at all this Spring?

A. We hadn't decided fully on that. As I told you before, there was a 33 1/3% reduction in fishing efforts that was inaugurated by the government. Now, we were undecided whether we should cut out a cannery, say like Diamond-X, entirely or work both canneries on skeleton form. A good deal depended upon the final arrangement made with labor here.

Q. This question of the government curtailment, of course, entered into the matter of whether or

(Testimony of Austin K. Tichenor.)

not you were going to consummate this years agreements with the Cannery Workers Union.

A. What is that again?

Q. This question of the government curtailment, of course, played an important part in whether or not your company planned to consummate an agreement with the Cannery Workers this year in San Francisco?

A. No, I don't think the government regulations would have affected our activities in Alaska except in that reduced form of 33 1/3%. What would affect us more than anything else vitally was the arrangement with labor.

Q. Isn't it true, of course, this curtailment was the real basis or one of the bases for the San Francisco Packers requesting the Union to sign the 1939 Seattle Agreement rather than offering to the union the 1939 San Francisco Agreement? Do you understand [174] the question, Mr. Tichenor?

Let us talk for the Alaska Packers. This curtailment played an important part in your decision and in your offering to the cannery workers the 1939 Seattle Agreement rather than the 1939 San Francisco Agreement?

A. I don't really know what agreement we offered to the cannery workers here. I wasn't handling that end of it, as you know. That was handled through this Alaska Salmon Industry. I don't know what offer they did make.

Q. You turned your negotiations over to Mr. St.

(Testimony of Austin K. Tichenor.)

Sure and Mr. Moore, representing the Alaska Salmon Industry?

A. I conferred with them from time to time concerning the meetings, but I didn't keep in touch with the details. I left that to them.

Q. They reported back to you the progress of the negotiations, didn't they?

A. Not very often, no.

Q. Had you delegated to them complete authority to sign on whatever terms they saw fit?

A. We instructed them, so far as our company was concerned, that we could go to Alaska under certain conditions—wages and working conditions.

Q. And what were those working conditions and wages?

A. That is a very long winded proposition. In fact, it was the conditions which, as I understand it, that this Mr. St. Sure and his associates presented to you people. Now, whatever they were, those were them. But I can't recall them.

Q. Well, the testimony here, and I suppose you heard some of it, Mr. Tichenor, were the negotiators for the Alaska Salmon Industry offered to the Cannery Workers Union the 1939 Seattle Agreement, or the 1940 Seattle Agreement. That they did not offer to our local Cannery Workers Union the 1939 San Francisco Agreement, which had higher wage scales and better conditions. Now then, directing your attention—you agree with that, Mr. Madison? That statement of fact?

Mr. Madison: The evidence speaks for itself.

(Testimony of Austin K. Tichenor.)

Mr. Resner: I don't want to mislead the witness.

Mr. Madison: I appreciate that.

By Mr. Resner:

Q. Now, then, you instructed Mr. St. Sure and Mr. Moore, then, that they should not offer to the Cannery Workers of San Francisco a renewal or a re-execution of the 1939 San Francisco Agreement, did you not?

A. You say we did or we did not? [175]

Q. I am trying to find out whether you did or did not?

A. I believe we did. We offered a renewal of the 1939 Agreement.

Q. I am speaking now of the San Francisco Agreement; you know, the San Francisco and Seattle 1939 Agreements were different, had different wage scales, and the question I am trying to find out is whether you Alaska Packers instructed your negotiators to offer to the union for 1940 the same contract that you had with the union in San Francisco in 1939?

A. I am not quite sure. I couldn't answer that positively. There is so much water passed over the dam since then. But I thought that we were satisfied with the cannery workers to go to Alaska under 1939 agreements with certain modifications. Now, what those modifications were I don't know.

Q. And you are referring now, of course, to the San Francisco.

A. But the modifications were quite an impor-

(Testimony of Austin K. Tichenor.)

tant part of the offer made to the cannery workers.

Q. And you are referring now, of course, to the 1939 San Francisco agreements?

A. The 1939.

Q. Well, then, of your own knowledge you don't know whether your negotiators, Mr. St. Sure and Mr. Moore, offered to the San Francisco Cannery Workers the 1939 San Francisco agreements?

A. I was not there when the offer was made, no.

Q. You don't even know whether such an offer was made?

A. I don't know what offer they made, outside of what they reported to me. They reported they had offered a certain agreement, whatever it was at that time; I can't recall the details now.

Q. The sailings for Alaska generally from year to year for the Bristol Bay operations commence around the latter part of May, do they not, in San Francisco?

A. The last five or six years the departure of the fleet has been so much delayed owing to labor difficulties with various organizations that our sailing time was quite late. We should sail with modern steamers that we operate now not later than about the 14th or 15th of May to perform our work and get our canneries ready for fishing operations in Bristol Bay, which we are talking about.

Q. How long does it take you to outfit a ship with perishables?

A. Well, it takes ordinarily about two weeks of certain supplies; naturally, you must have some

(Testimony of Austin K. Tichenor.)

of them on hand that you get from the East, like linen nets come out from Philadelphia, as an instance.

Q. Well, you had those on hand this year, according to your testimony?

A. Well, we had bought them on hand. [176]

Q. But it would?

A. But it would take ordinarily two weeks to load her, get the people on board, and get away from here.

Q. Did you give Mr. St. Sure or Mr. Moore any instructions on the deadline for the signing of agreements on the Bristol Bay operations?

A. I don't like that term "deadline" in the first place, but we told Mr. St. Sure—we gave him a date after which it would be impossible for us to outfit and get away.

Q. Can you tell us what that date was?

A. Bristol Bay?

Q. Bristol Bay from San Francisco?

A. I think it was about the 3rd of May. I have that impression, 3rd or 4th of May.

Q. Now, on this matter of wage claims, in previous years, that is prior to this year, you have taken up with the union or the union has taken up with you the question of disputed wage claims extending over from the prior season? Isn't that a fact?

A. Well, we have at times discussed disputed claims, yes; not as much as we had presented to us this year, but there has been instances, yes.

(Testimony of Austin K. Tichenor.)

Q. Directing your attention to the 1939 season, before the 1939 agreement was signed with the union there were wage claims which were taken up with the company and settled as between the company and the union, isn't that true?

A. I believe so, yes.

Q. And after wage claims were out of the way then the contract was negotiated and signed?

A. No.

Q. How did it happen?

A. Well, we have often arranged our contract with various organizations and our working agreements and wage disputes were held in abeyance—and in the Fishermens Union, for instance, as high as two or three years.

Q. But the fact there have been wage disputes or claims which have been a part of the negotiations is not an unusual thing?

A. I don't remember any up until this year. I don't know of any instance where the wage dispute of previous years was brought in as a basis for settlements on the 1940 operations.

Q. I want to ask this. Last year, 1939, weren't wage claims got out of the way first before contracts were signed? A. Not particularly.

Referee Roden: I don't think that is very important.

Mr. Resner: The only point is Mr. St. Sure tried to make a point of the fact the wage claims the union was presenting [177] was one of the real

(Testimony of Austin K. Tichenor.)

stumbling blocks to the union agreements. That the union wouldn't sign until they were out of the way. And I don't think it is important, either. I just wanted to develop the fact they weren't important.

By Mr. Resner;

Q. Mr. Tichenor, last year Alaska Packers, your company, negotiated your contract directly with the Alaska Cannery Workers Union, did it not?

A. Yes, and with all other organizations.

Q. And with all other organizations. I believe it was you who worked out the agreements with the union committees, as a matter of fact?

A. Yes.

Q. And that is the way you had done it in years prior to 1939 since you had been dealing with labor organizations? A. For many years.

Q. This year negotiations were turned over to Mr. St. Sure and Mr. Moore? A. Yes.

Q. Was there any particular reason you could give us at this time why that was done this year?

A. I imagine they thought I was too easy. I don't know what the reason was. I think our people thought by trying to negotiate a coastwise agreement, a uniform agreement all over the Pacific coast which, I believe, is the natural way of doing this thing. I think it obtained better results, not only for ourselves but for labor.

Q. I agree with you the union wanted to negotiate a coastwise agreement, too; of course, you un-

(Testimony of Austin K. Tichenor.)

derstand they didn't want to give up anything they had here in San Francisco. At least, they wanted that as a minimum from which to start.

A. You mean, the Cannery Workers Union?

Q. The Cannery Workers Union is what I am talking about.

A. Well, I will never forget the experience I had with 1939. We worked along with that idea in view and our friend George Woolf, here sitting alongside you, went to Seattle with that full intention and came back and had entered into an agreement that was coastwise; but, when he got back here the boys, he claim, repudiated it. And they didn't do a thing to us except Hiterlize a little bit and boost it up. Probably that is one of the reasons they wouldn't let me negotiate this agreement this year, and another reason why these boys here are out of employment. That is the way it looks to me. [178]

Q. Well, regarding next year, can you say at this time with whom you expect to negotiate next year's cannery agreements?

A. You say?

Q. I am talking about 1941?

A. I don't know. That is looking far way ahead. I always got along pretty well with these fellows.

Q. I know. They say that, themselves, Mr. Tichenor. Can you tell us how much of the pack you have on hand this season? Alaska Packers of last year? A. Now?

Q. Yes.

(Testimony of Austin K. Tichenor.)

A. Well, we haven't an abnormal amount. I think that we have less on hand now than, taking a cycle of six years, we have less on hand now than we had for the sixteen years say, about April 1st when we take our inventory; we haven't an excessive amount on hand.

Q. Your only operations are from San Francisco. You don't have any operations out of Seattle, do you? A. No, we do not.

Examination

By Referee Roden:

Q. The amounts on hand now, Mr. Tichenor, is slightly in excess of what they had on hand a year ago, isn't it?

A. I don't think so, Mr. Director. I think what we have on hand now is slightly less than what we had a year ago.

Q. I was reading one of the trade journals on my way down here and was rather struck by the claim made in it.

A. Yes, you are very right. It is a trifle in excess of what we had in 1939.

Q. Yes. That is what I mean.

A. However, it isn't in excess of what we had in 1938 or what we had in 1935, those years. It isn't an excessive amount for us to carry.

Q. At the time these negotiations were going on what was the outlook for the future in the canned salmon market, particularly with reference to the reds?

(Testimony of Austin K. Tichenor.)

A. Well, Mr. Roden, this was a year, 1940, for the salmon canner to operate if he could, with the war clouds gathering in Europe and without an excessive carry-over. The markets were fairly clear and all grades of salmon. This was a year we should operate.

Q. Including the reds?

A. This was a year we should operate, and we were anxious to operate, so far as I am concerned.

Referee Roden: Go ahead, Mr. Resner.

Mr. Resner: I think that is all.

Redirect Examination

By Mr. Madison:

Q. I just want to ask one question. Mr. Resner brought up the question of your leasing traps and of equipment in Alaska. [179] Now, in regards to any leasing of traps and equipment in Alaska, is it or isn't it true that what leasing arrangements you made were all made subsequent to the time when it became obvious here that you couldn't avoid this trade dispute and couldn't go to Alaska? A. Oh, yes.

Mr. Madison: That is all.

Recross Examination

By Mr. Resner:

Q. One more question. This year you had a different way of making your cans or different type of can than last year, did you not, Mr. Tichenor?

A. Yes. That is, we endeavored to install this what they call the modern can making machinery. In

(Testimony of Austin K. Tichenor.)

other words, the Alaska Packers Association for years have been their own can makers. This year we were going to obtain collapsible cans, which we did, in order to compete with our competitors.

Q. In other words, you in former years had made your cans on the grounds in Seattle, at Alaska?

A. On the grounds. In that way we were able to offer a longer term of employment to these boys than we would with the collapsed cans.

Q. That is right. Last year the working season for the Cannery Workers would have been about three weeks more. That is, making of cans up there would have taken three weeks more than this year?

A. I imagine so.

Q. In other words, Mr. Tichenor, that would have or could have delayed your departure an additional three weeks over previous years?

A. It would after this year, but this year in making those installations we were anxious to get away early.

Q. But this year it could have, at least, delayed your departure three weeks and you could have still carried on your operations there and completed your pack?

A. No, I wouldn't say that. For the installation of this machinery it would be necessary, if anything, to get away a trifle earlier than under ordinary conditions. Next year, possibly, we could possibly afford to delay a little bit.

Mr. Resner: That is all. Thank you.

MR. G. B. PETERSON,

64 Pine Street, San Francisco, California, being duly sworn testified as follows:

Direct Examination

By Mr. Madison:

Q. What is your name, please?

A. G. B. Peterson.

Q. And your address?

A. 64 Pine Street, San Francisco. [180]

Q. And your occupation?

A. General Manager of the Red Salmon Canning Company.

Q. Mr. Peterson, are you the Executive of the Red Salmon Canning Company who has had charge of the expeditions for Red Salmon Canning Company to Alaska in prior years?

A. Since 1934.

Q. And you are the Executive of the Red Salmon Canning Company who had most to do with the arrangements for going north this year?

A. That is right.

Q. Now, Mr. Peterson, did the Red Salmon Canning Company plan if they could avoid this labor dispute and make proper arrangements on going to Alaska this year?

A. We made every effort possible to do so.

Q. As I understand it, you operated at Bristol Bay only?

A. That is correct. We have two canneries there that we operate.

(Testimony of G. B. Peterson.)

Q. And you have no operations in Central Alaska at all?

A. No, none whatever. Nowhere else.

Q. Now, Mr. Peterson, what vessel has it been your custom or vessels has it been your custom to use in connection with your operations of the past?

A. In the last several years we have operated two vessels: The American Star, a large one; and the Madrona, which is a very small one. Both leave San Francisco, or have left, each Spring for Bristol Bay.

Q. Now, Mr. Peterson, did you have opportunities in the Fall of 1939 and Spring of 1940 to make profitable charters on these two vessels?

A. I don't recollect in the Fall, but we did have a number of opportunities in the Spring.

Q. Of 1940? A. 1940, yes.

Q. To charter these vessels on a very favorable basis? A. That is right.

Q. And that is because, I assume, of a shortage of vessels generally throughout the world during the European war? A. Yes.

Q. Did you accept any of those charter offers?

A. No, we did not.

Q. Why not?

A. About January our Board of Directors instructed me not to entertain any charters or do anything that would interfere with the 1940 operations, that is, the salmon canning operations. And if we chartered in January or thereabouts it was

(Testimony of G. B. Peterson.)

a danger the boat might be held up for one reason or another and thereby delay [181] or prevent our expedition. We did entertain one charter where we offered the boat, but we offered with the stipulation the person wanting to charter it, because it was in the nature of a salvage job, that they be back, I think it was, by the middle of April. And we, as part of the terms, insisted they put up, I think, a hundred thousand dollar bond, or something like that, for any delay at all. But that was one of the reasons the charter was not accepted.

Q. Now, as I understand, when you say it would interfere with your operations you mean interfere with the trip to Bristol Bay from San Francisco in May of this year? A. That is right.

Q. Now Mr. Peterson, since the expedition failed to sail, say, after the date given as May 3rd or given on May 3rd or about May 3rd, as the last date upon which the sailing could take place, have you made alterations in your ship with a view of possibly making it available for other runs?

A. Yes, beginning immediately after the 3rd, or a few days after, why, we started putting the boat in condition to charter. These boats, as you probably know, are specially adapted for our trade. At least, our particular boat is; and I think it is true of the Alaska Packers as well. We have a lot of these Standey Bunks, and other equipment aboard, which makes them a passenger ship in the terminology of the U. S. Government, but they are

(Testimony of G. B. Peterson.)

not a type of vessel that is readily charterable. At least, our boat is not. And it means quite a bit of change in order to prepare it for chartering as a freighter. We have since put the boat in that shape, but we did not do anything until subsequent to April—I mean May 3rd.

Q. In other words, the changes to make the boat available for other than the Alaska Fishing Industry voyage have all been made subsequent to May 3rd? A. That is right.

Q. And nothing was done to interfere with the vessel being hundred percent available until after May 3rd?

That is true. And it is even further than that. For instance, we filled it up with oil, which is peculiar to our industry in Alaska because we use the fuel oil not only on the ship as fuel oil but we take it ashore and use it in our canneries. And we filled up with this particular type of fuel oil, which costs more and is a thinner type,—I think, that would be the easier way to describe it. It costs more money, but it flows easier; and up in Alaska where it is cold the flow is, of course, restricted by the cold weather. If we were going to fill the [182] boat up for a normal charter we would fill it up with what is known as Bunker-C Fuel Oil, which is a cheaper but a better oil, for the freighter. That oil is still in that ship and we will lose money when we charter it, if and when.

Q. During the winter did you spend money get-

(Testimony of G. B. Peterson.)

ting the quarters for the crew, for the fishermen, ready?

A. Several of the unions went on board our ship and asked us to make changes, which we did for that particular voyage. Some of the work that we did on board, painting and what not, we would not have done if we had contemplated chartering it as a freighter instead of operating in the salmon business.

Q. Did you remove salmon stored so as to make it available to Alaska? A. We did.

Q. And during April did you employ men to assist in the purchase of supplies for the Northern Alaska trip?

A. Yes. That was two reasons. One was we, of course, wanted to get everything done expeditiously, but when the deadline was set, as you have used it here,—our organization being somewhat smaller than the Alaska Packers has to take a little more time. We haven't got the force that we can throw into the job. So we engaged the services of another man. We were fortunate to get one of the Alaska Salmon Company's men to come over so it would expedite our departure in order that we could get ready a little faster than normal. We would rather have had a date earlier than May 3rd, as I think Mr. St. Sure testified to yesterday.

Q. Did you prepare the electric Baker on the American Star to be used in transporting all these men for cooking meals for them?

(Testimony of G. B. Peterson.)

A. Yes. That would not have been done just to charter.

Q. And that was done during the Spring of this year?

A. Yes.

Q. Now, in regards to the proposed trip to Alaska, what would you say about the purchase of supplies? You have heard Mr. Tichenor's testimony here. Did you purchase the supplies that he purchased, in substantially the same way?

A. We went ahead on the definite assumption we would go to Alaska this year and did everything necessary which should be done or had to be done prior to May 3rd. When May 3rd passed and there were no agreements with the unions—in fact, I think there was one agreement, but it only involved two men. So far as we were concerned. That is the Blacksmiths Union. We saw there was no hope of going. In fact, we couldn't get our various supplies that we would [183] ordinarily buy in that time to go in any shorter time than had been set.

Q. Did you want to go to Alaska, your company?

A. Well, we had been operating for 45 years and the only time we haven't gone is when the government prevented an operation 1935; and our Board of Director instructed me to prepare for an operation. We decided upon the outfitting for our two canneries; how many cases we would prepare to pack. We arranged credits at the bank for the amount of money we thought we might need.

(Testimony of G. B. Peterson.)

We drew up a complete budget as to any improvements that were needed, which were presented to the Board of Directors and approved. And the expenses were entered into. As a result of that we bought a power scow, which we now have; and it is in Seattle. It will be a loss to the extent of any use this year. We bought our nets. We bought our cans. We bought some casing and loading equipment in the East, which we now have and have paid for. We will have insurance and taxes and interest on that equipment. It won't be used. We ordered a new lift truck. Well, there are an infinite number of things we did buy which had to be bought prior to May 3rd if we were going to get out in time to make the season. Naturally, we didn't get ahead and buy anything that wasn't necessary to buy prior to that time because everything that we don't use is a loss in one way or another, if nothing else in insurance and taxes. But we were prepared and would have gone had agreements been made by the date set.

Q. I will show you here a statement that was prepared by one of your associates showing the dates in which the American Star and Madrona sailed in the years 1937, 1938, and 1939, the dates they left San Francisco and arrived at Alaska.

A. Bristol Bay, you might say.

Q. Leave Alaska and arrive at San Francisco. And I will ask that this document be introduced in evidence and marked. I will ask you, first, if that is correct?

(Testimony of G. B. Peterson.)

A. I would say approximately correct, without having checked the accurate dates.

Mr. Resner: I have no objection to the portion of it dealing with when the ships sailed and arrived, Mr. Commissioner, but those portions stating below Subject and Exempt apparently means days the Packers says men are subject and exempt to the Act?

Referee Roden: Simply for the purpose of showing when the company ships sailed from here. [184]

Mr. Resner: We will tear off the bottom part, then?

Referee Roden: We will cross it off. (Indicating)

By Mr. Madison:

Q. Now, you stated so far as the applicable parts of that as to the sailings that is correct, Mr. Peterson? A. Approximately.

Mr. Madison: I will ask it be introduced and marked Canners Exhibit GG.

A. I say I have no reason to doubt that it isn't correct.

RESPONDENT'S EXHIBIT GG

RED SALMON

Year		Lv—SF	Ar—NK	Lv—Alaska	Ar—SF
1939	American Star	5/27/39	6/ 6/39	8/ 6/39	8/15/39
	Madrono	5/27/39	6/ 6/39	8/ 7/39	8/16/39
1938	American Star	6/ 1/38	6/11/38	8/11/38	8/21/38
	Madrono	5/27/38	6/ 7/38	8/14/38	8/23/38
1937	American Star	5/20/37	6/ 1/37	8/ 8/37	8/18/37
	Madrono	5/ 8/37	5/21/37	8/ 6/37	8/17/37

(Testimony of G. B. Peterson.)

	Subject	Exempt
Cannery Workers 1939	6/ 7— 6/30	5/27— 6/ 6
	7/ 1— 8/ 1	8/ 2— 8/15
Cannery Workers 1938	6/13— 6/30	6/ 1— 6/12
	7/ 1— 8/10	8/11— 8/21
Cannery Workers 1937	6/ 2— 6/30	5/20— 6/ 1
	7/ 1— 8/ 7	8/ 1— 8/18

Cross Examination

By Mr. Resner:

Q. Directing your attention to the curtailment this season, Mr. Peterson, how did that affect your company with the number of cannery workers you expected to hire in San Francisco.

A. Our company, being small, is in a little different position than the larger companies. The larger companies, of course, have several boats and several canneries. It is easier for them to curtail than it is for us. We can't cut a boat in half nor a cannery in half, or any part; so that we planned to go ahead on a full operation No. 1, because it either had to abandon the operations entirely or go on a full operation. And, furthermore, we knew that the Alaska Salmon Company was not going, and we felt that, therefore, there would be no infringement upon the government curtailment program even though we went on a full basis. And we so advised the U. S. Government we were going to do it at the meeting with the Commissioner. We had every intention of taking the same number of men this year that we took last year. In fact, among the cannery workers we planned to take a few more.

(Testimony of G. B. Peterson.)

Q. Then, you planned to take up the amount of fish which normally would have been allotted to the Alaska Salmon Company because they didn't plan to go this season, is that correct?

A. Not to that extent, because their operations is the equivalent of ours, and whether one third curtailment, of course, we would only absorb a minor portion of what they would normally take.

Q. When did you learn they planned to give up their operations?

A. Well, on about the same time that all of you were advised. As a matter of fact, when Mr. Fleager advised us officially, why, we felt it was the only decent thing to immediately notify the unions so they would not be under any delusion as to how many men were going to go or not going to go, and the men wouldn't be waiting around here for jobs [185] that wouldn't be offered them.

Q. That was around the latter part of April?

A. I don't know when it was, but I remember Mr. Tichenor and Mr. St. Sure and myself thought it was only fair to notify you fellows the same as we.

Q. I understand that thoroughly. I was trying to get you to recall the approximate dates you were so notified by the Alaska Salmon and I was just trying to find out if you recall that was sometime near the latter part of April, between the 20th and 25th?

A. I would say it was somewhere in April when it was finally and officially decided.

(Testimony of G. B. Peterson.)

Q. They would not make their expeditions this year? A. Yes.

Q. On the subject of wage claims, I suppose, you argued with the union and settled wage claims in years prior to this one, have you not?

A. Oh, yes. We have had wage claims a good many years. We attempt to pay the men everything that we can liberally interpret they are entitled to; and, naturally, men may differ with us. Some of the ones we feel are obviously unjust we have refused to pay. That doesn't mean that at the last minute we haven't had a forcing of paying them irrespective of their validity, as we see it.

Q. But the dispute over wage claims in previous years has never prevented signing of an agreement for the expedition to Alaska?

A. Well, I don't think it has interfered so much with the agreement, but I remember the year before the Cannery Workers Union refused to send the remaining few men to our ship, which was ready and loaded and all the men on board with the exception of a few, but refused to send those few until we had paid certain claims.

Q. These supplies you describe are non-perishable supplies, are they not?

A. Which ones to you mean?

Q. The ones you described as having been purchased for the current season?

A. Well, I would have to have a definition of what you mean by non-perishable? Your cans may rust and are, therefore, valueless the following year.

(Testimony of G. B. Peterson.)

You are not certain of that. But anything may be outmoded. In other words, you take a definite risk whenever you buy anything that you are not going to use the current year.

Q. But you planned to use all this material and current equipment you bought this year in your 1941 operations, do you not?

A. We hope to, but there may be changes of many kinds which will make some of that equipment worthless to us. We are going to try to use it, certainly; but we have already disposed of a lot of that stuff, and some of it at [186] a material loss to us.

Q. But the rest of it you do expect to use next year? Barring the contingency?

A. If we can't sell it at a reasonable figure of what it cost us, we certainly will try to use it any way we can.

Q. You knew about the government's relations sometime ago?

A. We knew it about the first of January, I think, somewhere around in January.

Q. January of 1939, that is?

A. No, 1940. It is official. You can get the official report.

Q. Certainly. Well, this curtailment is a regular thing in the industry. Every five years or so some of the grounds are shut down. This is what they call a cycle year, isn't that correct?

A. Well, in 1935, as I testified, the government came out and said they were not going to permit

(Testimony of G. B. Peterson.)

any operation in Bristol Bay. That has been brought out by other witnesses. Some did operate, but we did not.

Q. Then, whenever this curtailment year appears, why, there is, of course, always the possibility there won't be an operation that year as you normally carry it on, isn't that true?

A. Well, of course, the theory of this curtailment in 1935 was so that the run in 1940 would be a good one; and, otherwise, there is no point in curtailment in prior cycles.

Q. The question, Mr. Peterson, is this. Whenever the government lays down a curtailment season the probability and possibility, as a matter of fact, exists there you won't operate at all because of that curtailment. Isn't that true?

A. Well, the only time we have not operated is in 1935 when the Government wouldn't permit any operation. But whenever they have permitted any operation we have always operated, no matter how it was curtailed.

Q. Didn't the fact this was a curtailed season enter into the fact you didn't arrive at agreement with the Cannery Workers Union this year?

A. Well, it certainly can't be claimed that way with us, because I just testified we were going under full operation.

Q. Last year, I believe, you negotiated a contract with the Cannery Workers Union for your company?

(Testimony of G. B. Peterson.)

A. Our situation is this. Being of a smaller size than the Alaska Packers; and, furthermore, they have to get off an operation earlier to Southern Alaska. They have taken the lead in all negotiations and, as a rule, the various unions come to us and excepting as to minor details, Manning Scales and particular housing conditions and things of that kind, why, the [187] agreement we sign is almost identical with that signed by the Alaska Packers Association.

Q. And this year you and the other two companies entered into this corporation and turned those negotiations over to the Alaska Salmon Industry, Inc.?

A. We turned it over to the Alaska Salmon Industry for various reasons brought out here. The main thing, we were losing money for several years and felt that couldn't go on, not only for our own protection but for the entire industry and the workers. We felt we were being forced to operate at a disadvantage over the Seattle operators and we had to sell our pack in competition with them.

Q. Well, did you instruct Mr. St. Sure the absolute maximum that you would permit him to sign on for San Francisco operations of the Cannery workers Union? A. Yes, we did.

Q. Can you tell us what that was?

A. Well, of course, we instructed what we wanted; then the Alaska Packers and ourselves tried to work out what was a fair adjustment of our ideas. You have got to be a little flexible in the

(Testimony of G. B. Peterson.)

thing, but bredly speaking we insisted that we had to have some production because we had not been able to make any profit over several years. The Alaska Cannery Workers Union which you speak of, of course, was a peculiar situation in that we had reached what we thought was an industry wide agreement the prior year and your representative, that is the representative of this union, was in Alaska and signed for what we thought this union and we had negotiated—what we thought was an industry wide agreement.

By Mr. Madison:

Q. In Seattle, you mean? A. In Seattle.

By Mr. Resner:

Q. You are referring now to 1939?

A. Yes. Then they came down to San Francisco. And after we had everything, you might say, loaded on our boats they said, "Oh, we are not going to go for what we signed for. We demand that we get some raises here, there and everywhere!"

Well, we were in a predicament where we practically had to give in. Therefore, we felt that those tactics were so obviously unfair, especially as we negotiated what we thought was a very liberal agreement in 1939, we felt that we should not agree to these advantages which had been gained under duress and insisted that the 1939 Seattle Agreement be adhered to.

Q. And then you never instructed Mr. St. Sure that he should offer to the union the 1939 San Fran-

(Testimony of G. B. Peterson.)

cisco Agreement for the operations [188] out of this port?

A. I never heard any such offer as that being made.

Q. Do you have operations from Seattle?

A. No.

Q. San Francisco is your only operation?

A. Yes.

Q. What about your pack on hand at this time? What is the extent of it?

A. Our pack? I could give you the figures, but I notice the Alaska Packers did not and I imagine that that is probably a confidential matter. But I can say it is less than last year.

Q. Less than last year's pack?

A. Yes. We have on hand at the present time less than we had on hand at this time last year.

Q. These vessels you have chartered out since the season have been given out?

A. As a matter of fact, we haven't. We thought we had a charter, but we are not sure right now whether it is going to go through or not.

Mr. Resner: That is all. Thank you very much, Mr. Peterson.

Examination by Mr. Oliver:

Q. Mr. Peterson, may I ask you a couple of question? I expected to have a statement of sailings similar to the other companies, but it hasn't arrived.

Mr. Peterson, you are familiar with the sailings by the Alaska Salmon Company to Alaska?

(Testimony of G. B. Peterson.)

A. Generally we are familiar with what the other fellow does.

Q. And it is true, is it not, the sailings from San Francisco to Alaska and return by the Alaska Salmon Company vessels are approximately the same as yours?

A. Yes, I would say approximately.

Q. And you are familiar, are you not, with the location of the plants of the Alaska Salmon Company in Alaska? A. I am.

Q. And those plants are situated wholly in the Bristol Bay area, are they not? A. Yes.

Q. And there are no operations conducted by the Alaska Salmon Company in Central and Southern Alaska? A. Not that I know of.

Q. You mentioned in your testimony that upon being notified by Mr. Fleager that the Alaska Salmon Company was not to operate this year that you —and I couldn't hear whether you said anybody else—insisted that notification would be immediately given to the unions. It is true, is it not, that Mr. Fleager along with you and the others were insistant upon notification being given to the unions immediately?

A. Oh, yes. We all discussed it, and it seemed the only [189] thing to do.

Mr. Oliver: That is all.

By Mr. Resner:

Q. Just one question. You don't have any operations at all in Alaska this year, do you?

A. No.

(Testimony of G. B. Peterson.)

Q. And you haven't started it, and none is planned? A. No.

Mr. Madison: I have nothing further, if your honor please, in connection with this offer of proof, copy of which I have given your honor and copy of which I have given Counsel for the Claimants. So far as pertains particularly to a wage dispute I doubt if this offer has any material direct application. However, it occurred to me in connection with claims which may be made either by these Claimants or others for unemployment compensation in Alaska that this statement of the operations and classifications of the various ex-employes up there may be of some help to the Commission. Therefore, I will make this offer. If Counsel wishes to stipulate to it there will be no necessity of calling any witness. If your honor decides to reject it on the ground it is incompetent and irrelevant and immaterial then let the offer stand as our offer subject to that ruling. If neither of those two things are done, I will put a witness on and he will testify to all this.

Mr. Resner: I don't think it is relevant, Mr. Commissioner. I would object to it on that ground. It is not on the subject before the Board at this time. As I understand it, it is simply a question of whether or not such a labor dispute exists as justifies nonpayment of benefits to the men of the Alaska Cannery Workers Union, Local No. 5.

Referee Roden: Well, I tell you, Gentlemen. My directions are to simply investigate as to

whether or not a labor dispute existed at the time these negotiations were going on; and I am willing to do anything to expedite the adjustment of the claims of these men, if they have any claims. And I think the offer of proof is material and for that reason I overrule the objection, unless you submit some evidence concerning it?

Mr. Resner: I submit here evidence is being on behalf of all these organizations who, of course, are without representation on the matter before you. And the only point, as I understand it, Mr. Madison wants to bring out is that certain classifications according to the Packers contentions are exempt from [190] operations of the Act and under no circumstances would be entitled to benefits. I believe that is your point, isn't it, Mr. Madison?

Mr. Madison: We only want to get the facts before the Commission up there as to what these men do. The Commission doesn't know what the Fishermen do. They get paid five or six different ways and perform services of one kind or another. These questions have arisen and may arise up there, and we have been asked by our local counsel up there, by the Alaska Counsel, to try to help the Commission by setting forth some evidence here as to what these various people are, who they are, and what they do. Now, that is all this is intended to do.

Mr. Resner: As regards the Cannery Workers Union, of course, if the Referee rules, go ahead. But, as regards these other organizations, as I say, I am not authorized to represent them and they are without representation here. And if any evidence

is going to be taken which later might be the subject for your ruling which would exclude them from benefits, I think it is most inequitable.

Referee Roden: My purpose is this, Mr. Resner, it is quite logical to suppose, for the sake of argument, if the Commission finds that no labor dispute existed still it probably will not say Willy-Nilly, "We are going to pay these claims in full as presented to us." There may be other objections to the payment of these claims. And, to forestall any possible delay, if there is any evidence we can take now upon these points I am ready to take it.

Mr. Resner: As regards the Cannery Workers Union I would agree with you, but as regards all these other unions I would say no, because they aren't registered here.

Mr. Madison: If he doesn't represent them what right has he to make an objection?

Mr. Resner: The only party to this hearing is the Alaska Cannery Workers Union. In other words, the Packers deal with all these unions and the only union before the Commission at this time is the Alaska Cannery Workers Union.

Referee Roden: Then we will do this at the present time. We will go on as far as the Cannery Workers Union is concerned, let us proceed on that, then.

Mr. Madison: Well, to shorten the matter may I suggest that you have a chance to read this over?

[191]

That Mr. Barthold if he is called will testify to

this? That will shorten the thing considerably. He is here.

Mr. Resner: Can we have a recess?

(At 10:30 a.m. a five minute recess was taken.)

Referee Roden: Let's proceed, Gentlemen.

(Above mentioned evidence received as Respondent's Exhibit HH.)

RESPONDENT'S EXHIBIT HH

Sailings of Alaska Salmon Companys Vessels for Alaska

S. S. Glacier

1937: Sailed from San Francisco May 21st. arrived in Alaska May 31st. Sailed from Alaska Aug. 8th. arrived San Francisco Aug. 17th.

1938: Sailed from San Francisco June 4th. arrived in Alaska June 12th. Sailed from Alaska Aug. 9th. arrived in San Francisco Aug. 18th.

1939: Sailed from San Francisco May 28th. arrived in Alaska June 6th. Sailed from Alaska Aug. 1st. arrived in San Francisco Aug. 9th.

S. S. Elwyn C. Hale

1937: Sailed from San Francisco May 29th. arrived in Alaska June 11th. Sailed from Alaska Aug. 10th. arrived in San Francisco Aug. 21st.

1938: Did not operate

1939: Sailed from San Francisco May 30th. arrived in Alaska June 15th. Sailed from Alaska Aug.

13th. arrived in San Francisco Aug. 24th.
Above Taken From Company Records

Now, with reference, Gentlemen, to the Offer of Proof I understand we can agree the same may be submitted and a statement made by or given by Mr. Barthold, by the Alaska Packers Association, may be admitted in evidence, or that portion of it may be admitted in evidence appearing on Page 2 under Ted Sneed, head of the United Cannery Agricultural Packing and Allied Workers of Alaska, Alaska Cannery Workers Union, Local No. 5. And all that statement contained in Paragraph 4, commencing on Page 4 and ending on Page 5.

Mr. Resner: That is correct. I understand the stipulation from Mr. Madison is that these matters set forth in the Offer of Proof are matters which would be testified to by Mr. Barthold. You now stipulate he would so testify?

Mr. Madison: That is right.

Mr. Resner: I want to show Page 2 where the statement is made Tallymen are exempt while in launches. I do not stipulate to that. That is purely a matter of law.

Mr. Madison: Purely a matter of opinion. I understand that.

Mr. Resner: I also want to say this does not show the classification of nurses. I understand those were not included in the 1939 agreements whereas in 1940 Local No. 5 claims jurisdiction over them.

Mr. Madison: I understand that is correct.

What disposition is to be made of the balance of the offer?

Referee Roden: I would like to know if there is somebody here who can testify with reference to the statement contained on Page 1 of the proposed offer with reference to the Marine Cooks and Stewards Association? [192]

Mr. Resner: Mr. Examiner, I should have asked you this before. If I may have a few minutes I will call the offices of the District Council of the Federation and ask them what disposition they want with regard to their affiliated unions. You merely want these classification distinctions to show these different classifications of workers belong to these particular unions; and the type of work as described in your offer?

Mr. Madison: Just read that back?

(The Reporter read the previous question.)

All I want this for, this statement, is to prove these facts. These statements are true as to the matters of opinion set forth therein. They are stated to be matters of opinion and, obviously, I am not asking anybody to stipulate those are true.

Mr. Resner: Mr. Examiner, may we have a few minutes? I will call the District Council and ask them what disposition they may want to make. It may be they will be willing to have that go in on that basis.

Mr. Examiner, with respect to this offer of proof, on behalf of the District Council No. 2, Maritime Federation of the Pacific, and its affiliated unions, they have authorized me to go ahead and represent their interests insofar as they appear in this hearing. With regard to the Marine Cooks and Stewards, we have no objection to this classification and the description of their work going in or of the International Association of Machinists, Lodge No. 68; East Bay Union of Machinists; American Communications Association, Marine Division; Marine Firemen; Marine Engineers; Alaska Fishermens Union. We will stipulate Mr. Barthold will testify the matters set forth in this *office* of proof with regard to those unions would be the matters which he would so testify; but we will not stipulate that any of these classifications which are claimed to be exempt in this offer of proof are exempt.

Referee Roden: That is simply an opinion.

Mr. Resner: That is right.

Mr. Madison: I want to make one correction about that. Under the heading of Alaska Fishermens Union it will be noted this stipulation says: "Following is a list of the classifications of men employed by Alaska Packers Association listed under the name of the [193] union with which the Alaska Packers Association had agreements covering such classifications of work in 1939. "Mr. Barthold had just called my attention to an error in that the classifications, fishing bosses, beach bosses, trap bosses, webb bosses, seine bosses, gang bosses, and set net bosses, are not classifications specified in the

agreement. In all respects the statements contained in here will be testified to by him as true.

Mr. Resner: Of course, it will be then understood this offer of proof while what Mr. Barthold will testify to so far as these various unions are concerned our position is there may be some classifications omitted, do not at present appear, but if there do appear some classifications are left off that we would want them included.

Mr. Madison: That is correct. It is understood.

Mr. Resner: Now, Mr. Referee, here is another contract made with these different organizations.

Mr. Madison: Those are the exhibits referred to in the offer of proof.

Mr. Resner: I have no objection to the contracts going in, if that is what you want to do, insofar as the District Council units are concerned. Of course, with respect to the other unions I can't speak.

Referee Roden: Let me get that clear again? Which unions do you now represent?

Mr. Madison: Blacksmiths.

Mr. Resner: Blacksmiths, Carpenters, Master Mates & Pilots, and the Sailors.

Mr. Barthold: Do you represent the East Bay Union, too, of Machinists?

Mr. Resner: Yes.

Mr. Madison: The last two unions named on the top of Page 2 and Master Mates and Pilots and the Sailors Union of the Pacific.

Referee Roden: The American Communications Association?

Mr. Resner: American Communications Association.

Referee Roden: Firemen?

Mr. Resner: Yes.

Referee Roden: Master Mates and Pilots?

Mr. Resner: No.

Referee Roden: Marine Engineers?

Mr. Resner: Yes. [194]

Referee Roden: Sailors?

Mr. Resner: No.

Referee Roden: Alaska Fishermen?

Mr. Resner: Yes.

Referee Roden: That is all.

Mr. Madison: Now, if I may make another suggestion as to those four unions whom you do represent and whom you have no authority to stipulate, I would like to suggest Mr. Barthold be put under oath and he simply testify he has read this over and to the matters specified in relation to those four general classifications the facts set forth here are true and correct and he would so testify, of course.

Referee Roden: This witness' testimony applies to the matters set forth in the offer of proof submitted by the Alaska Packers Association and applies to those organizations, namely, the International Brotherhood of Blacksmiths, Drop Forgers, and Helpers; The United Brotherhood of Carpenters and Joiners of America; Masters, Mates, and Pilots of America, Local 90; and the Sailors Union of the Pacific—which said four organizations are not represented at this hearing by Messrs. Andersen and Resner.

All right.

MR. AUBIN BARTHOLD,

Director of the Alaska Packers Association, 111 California Street, San Francisco, California, being duly sworn testified as follows:

Direct Examination

By Mr. Madison:

Q. What is your name?

A. Aubin Barthold.

Q. Address? A. 111 California Street.

Q. And you are employed by the California Alaska Packers Association?

A. Yes, by the Alaska Packers Association.

Q. And have been for sometime past?

A. For the past four years.

Q. And what is your title there?

A. I am Director of the Company.

Q. Are you familiar with the operations in Alaska? A. I am.

Q. And with the work that the men do there? I am.

Q. And with the work that the men do there?

A. I am.

Q. And with their classifications? A. I am.

Q. And you read this offer of proof of the Alaska Packers Association? A. Yes, I have.

Q. And may I ask you if every statement contained therein with respect to the International Brotherhood of Blacksmiths, Drop Forgers, [195] and Helpers; the United Brotherhood of Carpenters and Joiners of America; the Masters, Mates, and Pilots of America; and the Sailors Union of the

(Testimony of Aubin Barthold.)

Pacific; and all the statements contained therein with respect to the Blacksmiths, Carpenters, Master Mates and Pilots, and Sailors,—are true and correct to your own knowledge? A. They are.

Mr. Madison: That is all.

Mr. Resner: No questions.

By Referee Roden:

Q. Let me see, is there anybody in the Hall here who belongs to the International Brotherhood of Blacksmiths, Drop Forgers, and Helpers?

A. (No One)

Q. Anybody here who belongs to the United Brotherhood of Carpenters and Joiners of America?

A. (No One)

Q. Anybody here who belongs to the Masters, Mates, and Pilots of America, Local No. 90?

A. (No One)

Q. Anybody here who belongs to the Sailors Union of the Pacific. Nobody here? All right.

Mr. Oliver: I believe Mr. Resner is willing to stipulate, on behalf of Alaska Salmon Company, that Mr. Ernest Asher, Treasurer of Alaska Salmon Company, would testify that Paragraph 4, that the facts stated in Paragraph 4, of the document entitled Offer of Proof of Alaska Packers Association was true and correct with respect to the Cannery Workers of Alaska Salmon Company?

Mr. Resner: I will stipulate Mr. Asher would so testify as stated in Paragraph 4; and I want the record to show, I think it does previously, but the record shows my objection that none of these matters

are relevant or material to the issue at hand in this hearing, which we understand is a question purely and simply of whether or not a labor dispute exists. And we have stipulated to it. We have made our stipulation as regards Mr. Barthold's testimony and various classifications and descriptions of work done solely for the purpose of expediting this matter by stipulating they would so testify.

Referee Roden: Yes.

Now, is there any other stipulation we can make, gentlemen:

Mr. Oliver: I think last night Mr. Resner had requested that Mr. Fleager be present? [196]

Referee Roden: Yes.

Mr. Oliver: And I think we agreed to stipulate along these lines in response to one of your questions to Mr. St. Sure yesterday, your question as to the reason why Alaska Salmon Company did not operate in 1940. Mr. St. Sure made a statement and, I think, the stipulation is to the effect that if Mr. Fleager had testified that he would testify to substantially the same effect as the testimony of Mr. St. Sure.

Referee Roden: In that respect can't we stipulate, Gentlemen, that the principle cause for the Alaska Salmon Company not operating was not on account a labor dispute may have existed?

Mr. Oliver: Well, I don't know just what a labor dispute is?

Referee Roden: Well, we all have a pretty fair idea of what it is, I guess. In other words, were there any reasons, cogent reasons, which compelled

the Alaska Salmon Company not to operate irrespective of any difficulties it might have encountered in negotiating a deal with its proposed employes?

Mr. Oliver: I could not go that far. I would be willing to stipulate that there were factors or causes in addition to a labor dispute.

Referee Roden: How easy would it be to get hold of Mr. Fleager?

Mr. Resner: You would stipulate to this, would you not, that it is a fact that the reason Alaska Salmon did not operate from San Francisco this year was not due solely and only to the existence of an alleged labor dispute?

Mr. Oliver: I would.

Referee Roden: Can't you go a little farther than that? The real cause was the fact that the Alaska Salmon Company was, well, financially embarrassed so it could not have operated even though an agreement had been reached between it and its proposed employes?

Mr. Oliver: No, because that is not the case.

Referee Roden: How difficult is it to get hold of Mr. Fleager?

Mr. Oliver: I think I can get hold of him. If you want Mr. Fleager I shall call him. I was trying to do away with the necessity of it by entering into this stipulation with Mr. Resner, which, apparently, was perfectly satisfactory to him?

Mr. Resner: Yes, the stipulation is all right. But I want to get the additional point, also, if we can. It is our feeling that [197] Alaska Salmon

had major reasons which do not take into account any labor disputes for not making this years expedition. In other words, their principle reasons were something else than an alleged labor dispute.

Referee Roden: Before you call him, let me ask you this question? Can you stipulate that if an agreement had been reached between the Alaska Salmon Company and its proposed employes it would have operated this season?

Mr. Oliver: I would stipulate that after having given its notification that it was not going to operate it would not have conducted any operations out of San Francisco in 1940, irrespective of whether there had been an agreement with the union or had not been an agreement with the union.

Mr. Resner: That is satisfactory.

Referee Roden: All right. You don't have to call him, so far as I am concerned.

Mr. Resner: I just want to call Mr. Rendon for several questions.

Referee Roden: Before we proceed we can all agree the relationship of employer and employe did not exist between these men and the canneries at the time these negotiations were carried on? I guess that is self-evident?

Mr. Madison: Well, it all depends on what tribunal you are before. If we tried to take that position before the Labor Board we would have our ears pinned back. We had once before the same question come up as to whether these people were

our employes or not and the Labor Board ruled they were.

Referee Roden: It seems to me when you sent out notices cancelling your contracts in 1939 that all contractual relations came to an end.

Mr. Madison: The same situation occurred in 1939 and the Labor Board ruled they were employes and we had to recognize their representatives for bargaining purposes. Now, so far as I am concerned, to my mind the question is a question as much of law as anything else and I don't think I for one, want to stipulate to it one way or the other way. That is the way I feel. [198]

Mr. Resner: Of course, it is self evident that at the time the present season would normally have commenced there was no presently existing employer-employe relationship between the various Packers and members of Local No. 5.

Mr. Oliver: That depends.

Mr. Madison: That is what I argued myself black in the face for two years ago before the Labor Board, before Mr. Woolf and your partner, Mr. Andersen. It was always decided against the employer no matter what the facts are.

Mr. Resner: I wouldn't say that.

Mr. Madison: Why should we be asked to concede something you deem to be in your favor in this particular instance when we tried to contend that for God knows how long before?

Referee Roden: It seems to me pretty plain when you cancelled the contract, abrogated the contract, no

further contractual relations existed; and, apparently, that cancellation was accepted by the union.

Mr. Madison: It was sure plain to me in 1938, but I didn't get very far.

Mr. Resner: The evidence is in, Mr. Examiner, along that line.

Of course, we can also agree no strike has been declared against the Alaska Packers, against any of the companies, and that immediately before the season would normally have started this year there were no cannery workers or any other workers employed in the various plants in Alaska with the members of the Alaska Salmon Industry, Incorporated. Do you follow me?

Mr. Madison: Now, are we going to take some more evidence or what? I have got through with all I have to offer here.

Mr. Resner: The only point is this. I am just trying to see whether we can get some of these issues cleared up? [199]

Mr. Madison: You have asked about fifteen witnesses whether there was a strike or not.

Referee Roden: Well, there was no strike.

Mr. Resner: The only point is this, whether immediately prior to the time this season would normally have started whether or not there were workers, members of a class or group represented by Local 5, who were employed in the various Alaska Plants of the San Francisco Operators?

Mr. Madison: That is what Mr. Roden wanted us to stipulate to, and I don't know whether they are employed or not.

Mr. Resner: They weren't employed January, February, March, or April of this year.

Mr. Madison: The Labor Board wouldn't have held they weren't employed.

Referee Roden: There is no evidence they were employed. The season came to an end last Fall, and that terminated all employment so far as evidence before this tribunal is concerned.

Mr. Resner: That is right. I will proceed with Mr. Rendon.

MR. VINCENT RENDON,

resumed and testified as follows:

Redirect Examination

By Mr. Resner:

Q. You have been sworn, Mr. Rendon, and testified you were a member of this Union, Local No. 5. You worked in Alaska, did you not?

A. Yes, sir.

Q. Where did you work?

A. Alaska Salmon Company.

Q. Which Plant? A. That is B.B.

Q. Bristol Bay: A. Bristol Bay.

Q. And at the end of the season?

By Referee Roden:

Q. What place was that?

A. I don't know what they call the place, but they used to call it Diamond-BB.

Mr. Woolf: There is another name for it too, Peterson's Point.

(Testimony of Vincent Rendon.)

By Mr. Resner:

Q. What time did the season come to an end there, so far as you were concerned?

A. It is August, 1939.

Q. And you returned to San Francisco at that time? A. Yes. We returned by that time.

[200]

Q. You didn't receive any pay from your employer between the end of that season and the present time, did you? A. No.

Q. And you have made application for benefits under the Alaska Law?

A. I did make application for five weeks now.

Q. Are you on strike against the Company?

A. No.

Q. You haven't worked at all this season in Alaska? A. No.

Q. And you are ready, willing, and able to work, are you? A. I am willing to work.

Q. On what conditions?

A. On the conditions of 1939.

Q. When you say 1939 what do you mean?

A. In San Francisco.

Mr. Resner: That is all.

Mr. Madison: No questions.

By Mr. Oliver:

Q. Have you applied for work in California?

A. This unemployment compensation.

Q. Have you tried to get a job?

A. Yes. But my line of work is in Alaska.

(Testimony of Vincent Rendon.)

Q. What do you do between the time you usually come back from Alaska and the time you go back to Alaska next year?

A. Well, I wait for the season again.

Q. You don't do any work at any time?

A. Well, I can't find any job here.

Q. What did you do between, say, August of last year and May of this year?

A. Well, I hung around our union hall.

Q. Did you apply for work? A. Yes, I did.

Q. Did you apply to the Alaska Commission for work? Did you state to the Alaska Commission that you were ready, willing, and able to work?

A. Yes.

Q. Had you registered for work?

A. Yes.

Q. Have you had an offer for a chance to work for anybody else? A. No.

Q. Do you receive any compensation from the union? A. Yes.

Q. Are you receiving compensation from the union now? A. No.

Q. When did your compensation from the union stop?

A. It stopped about a month ago, but they paid me only a dollar a day. That is, enough to pay my car fare.

By Mr. Resner:

Q. That is, during the time of the negotiations?

A. Yes. [201]

(Testimony of Vincent Rendon.)

Q. As a Committeeman?

A. As a Committee.

By Mr. Oliver:

Q. You don't receive any compensation other than carfare?

A. Well, they pay me only dollar, or sometimes only 50c, because we are not operating as a big corporation.

Q. Did you go to Seattle? A. Yes.

Q. Were you compensated while you were in Seattle?

A. Yes. They give me room and board.

Q. You were last employed by your union, were you not, in California?

A. No, they never pay me no wages. They pay me only carfare, or something, for my lunch.

Q. Well, under a lot of these up in Alaska when you work for the Alaska Salmon Company the food that you get is included amongst your compensation?

A. Yes.

Q. Now, is that any different when the union pays you? A. No.

Q. For your food?

A. Yes. In Alaska they told me my food is a dollar. That is what my union, they give me, a dollar a day, too.

By Mr. Resner:

Let me interrupt here to let the record show the claims as rejected by the Alaska Compensation Commission exclude compensation for the food; and,

(Testimony of Vincent Rendon.)

though that is supposed to be a part of the compensation in Alaska, the Commission is now allowing benefits for it.

Mr. Oliver: I was only interested in the fact whether he was employed in California and who his last employer was?

Mr. Resner: Making the point whether this car fare is compensation or not?

Mr. Oliver: The Act apparently requires that he be last employed by the Alaska Cannery Company.

I have no further questions.

By Mr. Resner:

Q. Were you employed by the union?

A. No.

Q. Were you a paid official of the union?

A. No.

Q. This money you are getting, it represented merely carfare?

A. Merely carfare and my lunch.

Q. In other words, expenses for negotiations with the union?

A. Because the unions—we can not afford to pay no big wages at all.

Q. Were you paid any wages?

A. No wages at all.

Q. Then you weren't a paid employe of the union?

A. No. [202]

Mr. Oliver: He has already testified, Mr. Resner, he had his food paid and his travelling expenses paid.

Mr. Resner: Of course, that is not wages. That doesn't make a man an employe.

(Testimony of Vincent Rendon.)

Mr. Oliver: You read under this Act wages consist of any compensation, regardless of form.

Mr. Resner: Well, that is all I have. No further questions.

By Mr. Oliver:

Q. Have you been assigned to work at any cannery in Alaska this summer? A. No.

Q. Did the unions make up any list of which they assigned various men to various canneries in Alaska?

A. They will assign me to the canneries where they will operate this year, but there was no operation at all. That is why I didn't have no job.

Q. If the Alaska Packers had operated this year and the Alaska Salmon Company had not, would you have been? And the Red Salmon had operated? Would you have been assigned to the Red Salmon or the Alaska Packers?

A. I believe that—I don't know where they will assign me, but I put up my application for any cannery that is open for 1940.

Q. Do you or do you not know, or is it or is it not true, that you were assigned to work at a cannery in Alaska other than that of the Alaska Salmon Company? A. I don't know.

By Mr. Resner:

Q. Well, did the union assign you to any cannery?

A. They will assign me in any cannery that is open.

(Testimony of Vincent Rendon.)

Q. But the assignments aren't made until the agreement is signed? Isn't that correct?

A. Yes.

Q. And no agreement was signed and, therefore, no assignments made. Is that also true?

A. Yes.

By Mr. Oliver:

Q. Now, you worked for the Alaska Salmon Company, as you testified I think, in 1939?

A. Yes.

Q. Where did you work in 1938?

A. In Alaska Packers.

Q. Where did you work in 1937?

A. Alaska Packers.

Q. Where did you work in 1936?

A. In Red Salmon.

Q. When was the last time before 1939 that you worked for the Alaska Salmon Company?

A. That is August 19th. That is the day. [203]

Q. What year? A. 1939.

Q. Before that?

A. I did not work Alaska Salmon. I work for Alaska Packers in 1938.

Q. You think, do you not, if there had been an operation by the other two packers you would have worked in Alaska this summer?

A. That depends on my union? They would assign me.

Mr. Resner: The witness has already answered the question, he doesn't know. Assignments aren't made until after the contract is signed.

(Testimony of Vincent Rendon.)

By Mr. Oliver:

Q. Was there any notice posted in the union hall if you didn't have a regular agreement with the employers this year you would get unemployment insurance from Alaska?

Mr. Resner: I object to the question as being completely incompetent, irrelevant and immaterial. I don't see what point it makes. Of course they are entitled to benefits. If the union posted notices it should have posted notices to apprize the men of their rights.

A. (Mr. Rendon) I think they have a notice that every member that they are not working, well, we can file an application for the unemployment compensation.

Mr. Oliver: No further questions.

Mr. Resner: That is all, Mr. Rendon.

I want to make this offer of proof. That I will call all the other claimants whose names are on file here and they will testify substantially as Mr. Rendon has, excluding the testimony concerning union activities.

Mr. Madison: I won't stipulate to that.

Mr. Oliver: I won't either. We can't.

Mr. Madison: You said there was a labor dispute now.

Mr. Resner: I never said there was a labor dispute. You said there was a labor dispute.

Mr. Madison: If you want to test all your applicants for their qualifications or disqualifications go ahead and test them. I am not going to stipu-

late to their qualifications and disqualifications. I don't know anything about them at all.

Mr. Resner: The only point is this. They worked in Alaska last year. That they are not on strike this year. [204]

Mr. Madison: I don't know if they have worked. I haven't checked those lists. You haven't offered them to me.

Mr. Resner: I believe I offered the claims. They are in evidence, all of the claims that have been made so far—the names of the claimants—those names offered and rejected are in evidence.

Mr. Oliver: But the Claims, themselves, are not in evidence, are they?

Referee Roden: No, they are not.

Mr. Resner: No. They are in the hands of the Commission.

Mr. Oliver: In the beginning of this proceeding one of my objections was and still holds good—we don't know yet what the Claims are or who the Claimants were?

Mr. Resner: We can get them from the Commission. They are on file with the Commission.

Mr. Madison: The answer is no. We won't stipulate to it. If there is something else about this man's testimony, I don't recall all exactly he testified to, if there is something else about it that you want to stipulate to let me know. Reduce it and I will tell you whether I will or not, but I am certainly not going to testify to all the qualifications of all the Claimants. I don't even know who filed or what their claim is.

Mr. Resner: It is merely this. All the members of the union who have filed claims would testify that they worked in Alaska last year. That they are not working this year. That they have filed claims. That they are ready, willing, and able to work on the basis of the 1939 San Francisco agreement. That they are not on strike against the Company.

Mr. Madison: I have no information on that whatsoever.

Mr. Resner: I know that. I am merely asking you whether or not you will stipulate to the fact these other witnesses I have put on will so testify, simply as to my stipulation Mr. Barthold will testify to your offer of proof.

Mr. Madison: Absolutely no.

Mr. Resner: Then, Mr. Referee, I suppose I will have to call all these hundreds of Claimants.

Referee Roden: All right. Let's proceed.

Mr. Oliver: It is true, is it not, Mr. Resner, those lists are of ones who have filed claims and whose claims were rejected prior [205] to this hearing?

Mr. Resner: That is right.

Frank Aragon? (No response)

Sing Tom?

Quong Chin?

Sam You?

Alfonso L. Plasabas?

If any of the members of the Union hear me call their name I want them to come forward and take this witness chair.

Philip R. Olita?
Mamerto Diangzon?
Vincente Osorio?

MR. VINCENTE OSORIO,

SS.A. No. 567-16-7645, being duly sworn testified as follows:

Direct Examination

By Mr. Resner:

Q. Your name is Vicente Osorio, Social Security Number 567-16-7645? A. Yes, sir.

Q. Where did you work last year during the Alaska Salmon season? A. In Chignik.

Q. Who for? What Company?

A. Alaska Packers.

Q. And you have made a claim for unemployment insurance? A. Yes, sir.

Q. This year? A. Yes.

Q. Are you on strike against the company?

A. No, sir.

Q. Are you ready, willing, and able to work?

A. Yes, sir.

Q. On what conditions? A. 1939.

Q. 1939 what? 1939 San Francisco Agreement?

A. San Francisco Agreement.

Mr. Resner: That is all.

Mr. Madison: Just a second. Is that all you want to show by all these witnesses?

Let me ask you this? Would a stipulation be satisfactory to you that each of the Claimants, whose

names have been introduced in evidence here, would testify as this man has testified? But that such testimony shall not be deemed to be controlling over: One, of the fact that they have or have not filed claims, which will appear as a matter of record in the Unemployment Commission in Juneau; and, two, as to whether they did or did not work for one of the canneries last year will appear on check with the company's payroll. [206]

Mr. Resner: Is that your question, Mr. Madison?

Mr. Madison: Yes.

Mr. Resner: The answer is yes.

Mr. Madison: Then, I would like to have that written up and take a look at it and I think, quite probably, we could stipulate to that. And that will avoid calling about two thousand witnesses.

Mr. Resner: That is right, Mr. Madison. That is just what I asked for five minutes ago.

Mr. Oliver: Just one question. You asked the question, I think, that they are ready, willing, and able to work? And you say under 1939 conditions?

Mr. Resner: Of San Francisco.

Mr. Oliver: Now, if you are coming under the Alaska statute and trying to qualify these matters they have to be ready, willing, and able to work in any suitable work; and it doesn't have to be on 1939 conditions.

Mr. Resner: That is up to the Commission to decide.

(Remarks were made off the record.)

Mr. Resner: Well, I am going to offer to prove by each Claimant whose claim is on file at the present time before the Commission, whose names are in the records, that they are members of Local 5 of the Alaska Cannery Workers Union. They have filed claim they are not on strike against the company for 1940 Alaska season. They are ready, able, and willing to work for the 1940 Alaska season on the basis of the 1939 San Francisco agreement.

Mr. Madison: And that stipulation of Counsel for the Canners to this effect would not be deemed to waive or adversely affect any right to raise any other disqualification that may be contained in the Act in the event it should be decided that no labor dispute exists.

Mr. Resner: I certainly should stipulate you would not be precluded from raising any substantial objection at any time you wanted to.

Mr. Madison: Or the Commission, either, of course.

Mr. Resner: Certainly. Because the only dispute here is a labor dispute, as I understand it, as the Examiner stated when we first started this hearing?

(Thereupon, at the request of Counsel, copies of that portion of the transcript from the top of page 335 to the end of the last previous sentence were made by the Reporter and delivered to Counsel.) [207]

At 12:00 M the hearing was adjourned, to reconvene at one o'clock.

Wednesday Afternoon Session

At 1:30 P.M. the hearing was reconvened by Referee Roden.

Referee Roden: All right, Gentlemen, come to order.

Did you look at that, Mr. Madison?

(Referring to the copy of that portion of the transcript appearing on page 335, which was made upon adjournment at 12:00 o'clock.)

Mr. Madison: Yes, it is entirely satisfactory to us.

Mr. Resner: Yes.

Referee Roden: I haven't seen it. Is it satisfactory?

Mr. Resner: As far as I am concerned, it is all we offered to prove by our witnesses.

Mr. Madison: I believe this means these witnesses if called would testify to that?

Mr. Resner: That is all.

Mr. Madison: That amendment is entirely satisfactory.

Referee Roden: Well, we will admit it is evidence then. Is there anything further, Gentlemen?

Mr. Resner: It says ready, willing, and able to work for the 1940 Alaska season.

That is all.

Mr. Madison: I would like at this time to introduce in evidence the balance of those minutes which you said you wanted to introduce a certain part of it. I thought they all ought to be introduced, and want to introduce the balance of them.

Referee Roden: Exhibit 15? Well, I guess that is admitted, of course, as to any minutes that are relevant at all.

Mr. Resner: Are you referring to the comments about the unemployment insurance?

Mr. Madison: I am referring to the whole thing, any part of the minutes that tend to show the offer made the 29th was not a bonafide offer.

Referee Roden: Any part of the minutes that are relevant.

Mr. Resner; The only point for which I offered these minutes is already in the record, and I see no relevance to the balance of the minutes.

I object on that ground.

Referee Roden: Objection overruled. [208]

I have nothing further. Anything further, Gentlemen?

Mr. Madison: Nothing further.

Referee Roden: I understand you Gentlemen are going to submit a brief on this question of whether a labor dispute existed?

Mr. Resner: Yes. Can we fix a time limit?

Referee Roden: Yes, how many days do you want?

Mr. Oliver: Is that limited to the labor dispute question solely?

Referee Roden: If you want to touch upon any other point, that is all right, that you might think is involved?

Mr. Madison: I presume you will enter a brief and we will have an opportunity of replying to it?

You are the Claimant and the Claimant is usually the moving party.

Mr. Resner: We are going to file a brief, Mr. Madison. My thought is this, however. Both parties should file briefs simultaneously and both parties reply to the other parties brief.

Mr. Madison: Frankly, the issues of the case were outlined somewhat briefly by you in your opening statement. They acted in such a way you seek to claim whatever you call it didn't apply to this particular situation. In my mind, if I filed a brief now I would say it was perfectly obvious to everybody it was a trade dispute.

You have got some other theories about this thing. Let's answer them in an intelligent way; and then if you want to file an answer to my brief it is all right, of course.

Mr. Resner: Of course, the question of time is very important.

Mr. Madison: I will agree to reply in ten days.

Mr. Resner: I wouldn't want any more than ten days. Today is the 19th. I wouldn't take any more than ten days; and, I think, the Respondents here should have five days after that?

Mr. Madison: We have ten and you have five. You want ten, we have ten, and then you want five, is that right?

Mr. Resner: Is that what you want, Mr. Madison?

Mr. Madison: Yes.

Mr. Resner: I think that is all right, with this

exception, however, if I can get my brief in within a period of, say, three or four days I would like to have some assurance you people would try to do the same? [209]

Mr. Madison: We will be very happy to.

Mr. Resner: With that understanding, it is all right.

Mr. Oliver: Is there a title?

Referee Roden: I told the Reporter to put the title in the matter of Frank L. Aragon, et al, Members of Cannery Workers Union, Local No. 5, San Francisco.

All right, Gentlemen. I thank you for your kind attendance.

(Remarks were made off the record.)

At 1:45 p.m., Wednesday, June 19, 1940, the hearing was adjourned. [210]

Before the Unemployment Compensation Commission of Alaska

In the Matter of

FRANK L. ARAGON, et al.

MEMBERS OF CANNERY WORKERS UNION LOCAL NO. 5, SAN FRANCISCO,

Claimants for Unemployment Benefits.

DECISION BY REFEREE

Statement of Case. The claimants having been disqualified by an initial determination of the Unem-

ployment Compensation Commission from receiving unemployment benefits for eight weeks on the ground that their unemployment was due to a labor dispute in active progress at the establishment at which they were last employed, under the provision of section 5 (d) of the Alaska Unemployment Compensation Act, the Alaska Commission appointed a Referee to take such evidence as might be offered by the claimants and their former employers, and to make findings of fact and conclusions thereon.

Both parties appeared before the Referee and submitted evidence in support of their contentions, the claimants maintaining that no labor dispute existed while the employers took the opposite stand.

The claimants are all members of Alaska Cannery Workers Union Local No. 5, of San Francisco, a local union of the United Cannery, Agricultural, Packing and Allied Workers of America, hereinafter designated the "Union"; this union is affiliated with the Maritime Federation of the Pacific.

All the claimants were employed during the 1939 canning season by the Alaska Packers Association at Chignik and Karluk (in central Alaska); and by the Red Salmon Canning Company, the Alaska Salmon Company and the Alaska Packers Association in Bristol Bay. These will hereinafter be designated as the "Employers." All the claimants reside in the San Francisco Bay Region and the Employers operate out of San Francisco.

The Alaska Salmon fishing and canning industry is a seasonal one, extending approximately from April through September of each year. The Commission has promulgated regulations wherein, for the purposes of the Act, the beginning and closing days of the salmon season for various areas in Alaska are fixed. At Kodiak Island (Karluk) the season is [211] from April 5th to September 5th; at the Alaska Peninsula (Chignik), from April 1st to September 10th; and at Bristol Bay, from May 5th to August 5th (Benefit Regulation No. 10).

From the inception of the industry in Alaska, the salmon fleets carrying supplies, fishermen, and cannery and other workers have sailed from San Francisco for the annual season to Karluk, Chignik and Bristol Bay. The Employers have for many years operated under agreement with the Alaska Fishermen's Union, and in more recent years have worked under agreement with other unions. The Employers and the Alaska Cannery Workers Union Local No. 5, representing claimants herein, entered into their first agreement in 1936. Their 1939 agreement provided that either party might terminate it at the close of the season, or before the following season, and the parties would then proceed to negotiate a new agreement.

The 1939 agreement was terminated in accordance with its provisions; correspondence was then exchanged looking toward the negotiation and conclusion of an agreement covering the employment of the cannery workers and the terms and conditions of employment for the 1940 season.

Negotiations were entered into; on April 3, 1940, and while these negotiations were pending, the Employers notified the Union that if no binding contract were concluded by April 10th, no operations would be undertaken at Karluk during 1940; if no binding contract were entered into by April 12th, no operations would be undertaken during 1940 at Chignik, and later in the course of the negotiations, the Employers informed the Union that if no binding agreement were reached by May 3rd, 1940, no operations would be conducted in Bristol Bay during the 1940 season. No agreement was reached with reference to any of the plants referred to and the negotiations culminated in a deadlock.

When the "zero hour" fixed by the Employers came, the Union was notified that no operations would be carried on at any of the Employers' plants at Karluk, Chignik or Bristol Bay during 1940.

As a result, the claimants became separated from their employment on April 10th, April 12th, and May 3rd, 1940, respectively, each with reference to his last place of employment; they became thus separated from their employment by the termination of a contract between them and their 1939 Employers and their inability to negotiate a new contract for 1940 operations. [212]

The Examiner, upon initial hearing, ruled that the unemployment of the claimants was due to the existence of a labor dispute in active progress at the plant of their former Employers and, in conformity to section 5 (d) of the Alaska Unemploy-

ment Compensation Act, held each of them disqualified to receive benefits for a period of eight weeks immediately following the opening date of their seasonal employment as determined by the Commission in Benefit Regulation 10.

From the initial determination the claimants appealed, a Referee was appointed by the Alaska Commission to take proofs and make findings and decision.

The Employers insist that their plants formerly operated by them were not in operation during the 1940 canning season on account of the existence of a labor dispute in active progress at their establishments; the Union contends that its members are unemployed because the operators refused to negotiate a new contract; that they arbitrarily terminated the negotiations; that the negotiations were not carried on on their part in good faith; that they offered to go to work during the 1940 season under terms and conditions of their 1939 contract and that they, the Employers, at no time intended to operate during 1940 due to stringent fishing regulations imposed upon them by the Bureau of Fisheries, and that this condition does not constitute a "labor dispute in active progress at the establishment of their last employers", within the meaning and purview of the Alaska Unemployment Compensation Law.

FINDINGS OF FACT

From a consideration of the evidence submitted

at the Hearing, the Referee makes the following Findings:

1. That the 1939 contract between the Union and the Employers was terminated in the month of November, 1939, and negotiations for the 1940 season contract commenced in the month of March, 1940.

There were no employees, members of the Union, employed at any of the Employers' plants immediately prior to the date of the opening of the 1940 season and none had been employed since the termination of the previous season, to wit, in September, 1939, so that when negotiations for 1940 were commenced, the relation of employer-employee did not exist between the parties to this controversy.

2. Early in 1940 the Employers organized a corporation, the Alaska Salmon Industry, Inc., for the purpose of handling labor problems and associated matters on behalf of its members, all of whom are salmon [213] canners; it opened an office in Seattle to conduct negotiations with the labor organizations representing employees of its members, particularly those operating out of Seattle and Portland; it also opened an office in San Francisco to carry on similar operations for the three salmon canners operating from there, to-wit: Alaska Packers, Red Salmon Company and Alaska Salmon Canning Company, the three operators concerned in this hearing; the Employers delegated to it authority and functions they had theretofore exercised directly.

3. On March 6th, 1940, Alaska Salmon Industry, Inc. notified the Union that it represented the San Francisco Salmon Canners, herein designated

as the "Employers" for the purpose of negotiating a contract for the 1940 season and requested meetings for that purpose.

On March 9th, the Secretary of the Union notified the Employers that a scheduled meeting for March 12th had been cancelled for the reason that the Union would not enter into 1940 negotiations until after all disputes between its members and the Canners, which had arisen during the 1939 season, had been adjusted.

On March 27th, the Union presented its proposed 1940 agreement; a meeting was held at which the offer was discussed; in it the Union raised its demands above those it had enjoyed under the 1939 (San Francisco) agreement and the 1939 San Francisco agreement was more favorable to the Union that the 1939 Seattle agreement which had been negotiated between the Canners operating out of Seattle and Portland in the same sections of Alaska in which operate the "Employers" concerned in this hearing. The "Seattle 1939" agreement had been negotiated between said Canners and other locals of the Cannery Workers Union operating out of Portland and Seattle.

On April 1st or 2nd, the Union forwarded its letter to the Employers withdrawing its proposed 1940 agreement and stating that all future negotiations concerning wage scales were transferred to Seattle where its representatives would meet, and did meet, with the Employers. This announcement

was hailed by the Employers with satisfaction; their purpose being to negotiate a coast-wide agreement between all cannery operators and the Unions so that one uniform agreement should govern them all; such a coast-wide agreement would put the San Francisco operators on an even competitive footing with the Seattle and Portland operators. The San Francisco operators hoped to cut the San Francisco Union demands which it had been required to pay for a number of years, [214] down to the Seattle Union demands, while the San Francisco Unions expected to improve their position under the agreement expected to be negotiated in Seattle; in other words, both parties to the controversy hoped to gain by the coast-wide agreement to be negotiated in Seattle.

On April 3rd, the Employers advised the Union that if no satisfactory agreement were reached between them and all unions concerned by April 10th, operations at Karluk would not be undertaken and if no agreement were reached by April 12th, the operations at Chignik would be abandoned for 1940; this letter contained specific offers to all the Unions concerned by the Alaska Packers who were the only operator concerned in the Karluk and Chignik regions. This letter, in part, is as follows:

April 3, 1940.

To the Unions Concerned:

We are advised by Alaska Packers Association that if that Company is to operate at Karluk and

Chignik during the 1940 season, the S.S. Chirikoff must sail from San Francisco not later than April 17, 1940. Since it is necessary to prepare and make purchases for this expedition, if it is to be undertaken, all arrangements for employment for Central Alaska must be consumated on or before April 10, 1940.

If agreements for employment are not completed by that time, it will be impossible to attempt to operate at Karluk, and that operation will not be undertaken.

We are advised further by Alaska Packers Association that if there is no operation at Karluk, but an expedition is outfitted for Chignik only, the sailing date for the S.S. Chirikoff can be postponed to April 21, 1940, and the final date for making preparation to April 12, 1940.

Each of these dates represents the latest possible time that can be set, and no leeway is allowed for unfavorable factors of weather, breakdown, etc.

We are authorized to submit this information to you upon the basis that if the final dates indicated for preparing the respective expeditions are allowed to pass without complete agreements as to working contracts with all unions concerned, such expeditions cannot and will not be undertaken. The experience of past years has proven that unless a clear declaration of intention is announced by operators and unions alike, last minute demands, negotiated under penalty of great losses to the operators necessarily resulting from delayed expeditions, have

placed an unfair burden on attempted operations. It is essential that we avoid a repetition of this procedure in 1940.

Because certain delays have been experienced already, we believe it is proper to outline the progress of negotiations to date.

Prior to March 1, 1940, all unions having contractual relations with salmon canners operating out of San Francisco, were advised of the termination of the 1939 agreements and of the necessity of negotiating new agreements for the 1940 season.

On March 4, 1940, offices were established in San Francisco by Alaska Salmon Industry, Inc., and on March 8, 1940, a letter was addressed to each union signed by the San Francisco operators, certifying that Alaska Salmon Industry, Inc., was authorized to represent these operators in all negotiations for the 1940 season but without representation that there would or would not be operation.

[215]

This letter of authorization was prepared at the request of the unions affiliated with the Maritime Federation of the Pacific.

On March 6, 1940, these unions advised the office of Alaska Salmon Industry, Inc. that no negotiations would be undertaken without such authorization, and that even if such authorization existed, no negotiations would be undertaken by any union as that group until all prior claims of all unions of the group were settled to the satisfaction of the unions concerned.

In reply to this declaration, Alaska Salmon Industry, Inc., advised each union affiliated with the Maritime Federation of the Pacific as follows on March 8, 1940.

"Enclosed herewith is a statement from Alaska Packers Association, Alaska Salmon Co., and Red Salmon Canning Company, indicating the extent to which Alaska Salmon Industry, Inc., is authorized to deal with you on their behalf. Your attention is drawn to the fact that such authority is strictly limited to negotiations regarding a contract for the 1940 season only, without any representation whatsoever that any of these canners will or will not operate in Alaska this season, and that such negotiations can be directed only to matters immediately involving a possible 1940 contract without reference to any unadjusted matters arising out of previous collective bargaining agreements.

"Should you desire to present any claims arising out of operations for 1939 or prior years, you are requested to take them up directly with Mr. Fleager of Alaska Salmon Company, Mr. Peterson of Red Salmon Canning Company, or Mr. Everett Matthews of the firm of Pillsbury, Madison and Sutro, on behalf of Alaska Packers Association, as the case may be. These gentlemen are already well acquainted with problems which have arisen under the previous contracts, and inasmuch as they have already had under consideration a number of these claims, it is the decision of these companies that

they should follow such disputed matters through their final settlement.

"This office, on the other hand, has had no experience either with the previous contracts in general, or with the specific disputes which have arisen under them. We are prepared only to consider possible arrangements for the coming season. Will you therefore, please present any such claims immediately to the parties above named for further discussion.

"Since the companies individually are ready to meet with you concerning all prior claims, we believe it is obvious that all unsettled matters for previous seasons can be adjusted through proper legal channels without depriving either party of a full and fair determination. Since this right of adjustment exists, and since the time factor is so vital to all parties concerned, we trust that you will not continue to take the position heretofore declared by you to the effect that the final settlement of all these separate claims in a manner satisfactory to you is a condition precedent to any 1940 negotiations. Such a position might jeopardize all possibility of operation, for it would require one party or the other to forfiture of a right to a full hearing under threat of a refusal to bargain.

"Consequently, we will appreciate your advising us in writing at your earliest convenience concerning the position which your group proposes to take in the light of this communication."

From March 8th, until March 19th, no negotia-

tions were conducted with any of the Unions affiliated with the Maritime Federation of the Pacific because of their refusal to meet, but on March 19, 1940, the Alaska Fishermen's Union presented to the Alaska Salmon Industry, Inc., a series of demands for changes in physical equipment in Alaska, together with certain contract changes. This union stated that specific replies concerning the requested physical changes would be required before any further negotiations would be carried on. Since that time, two further meetings have been had with the Fishermen's Union to discuss all matters presented by its representatives. [216]

On March 21st, the Marine Engineers Beneficial Association made an appointment for a meeting, but failed to appear, and despite our request for another appointment, none has been made.

On March 27th, meetings were had with representatives of the Marine Cooks and Stewards and with the Alaska Cannery Workers at which preliminary demands for contract revisions were presented. Further meetings to negotiate these demands were held on March 29th. We are now advised by the Alaska Cannery Workers Union, by letter dated April 2nd, that they are withdrawing from negotiations in San Francisco and will negotiate all agreements at Seattle.

Also, on March 29th, the representatives of the American Communications Association met with us for the first time and presented a proposal for a tentative agreement, and on April 2nd, the Marine Firemen presented their demands.

Negotiation meetings and conferences have been held with the Masters Mates and Pilots, the Sailors Union of the Pacific, the Carpenters Union and the Blacksmiths Union. To date the two Machinists Unions have declined to meet for purposes of negotiation.

On the basis of this record and because of the pressure of time heretofore indicated, we deem it necessary to state in detail the proposals and counterproposals of the operators covering the work claimed by each union, with the understanding that unless existing differences can be adjusted or negotiated before the dates hereinabove mentioned, the respective operations cannot be undertaken, despite our willingness and desire to operate if fair conditions are established.

In general, each union thus far contacted has been advised by the operators representatives that operating costs under union contracts have amounted to such an extent that no further increases can be granted and further, that certain conditions, particularly those involving over-time claims of certain unions, must be corrected if the industry is to be enabled to continue in business. Upon this general premise, the operators hereby propose working agreements and conditions which they submit to be fair. Wherever changes from 1939 agreements are offered, the reasons for such changes are set forth in detail.

In making the following proposals and counter proposals, the operators desire to emphasize that

they are in all instances equal to or in excess of conditions already established and approved by the unions concerned in their dealings with other industries and in dealings with competing operators in the same and allied industries. The salmon canners do not believe that they should be required to make further concessions which will cause their operations to be actually and competitively impossible without continuing heavy losses.

The specific proposals hereinafter listed are intended to cover possible operations in Central Alaska only, and not intended to apply to Bristol Bay. The possibility of operation at Bristol Bay will depend upon negotiation of working agreements of a mutually satisfactory nature, and it is hoped that immediate discussions will be undertaken by the unions concerned.

Although the time factor, and the refusal of certain unions above listed to negotiate at all, will make it difficult to discuss in detail all matters of difference resulting from the proposals and counter proposals made herein, Alaska Salmon Industry, Inc., is ready and willing to meet immediately with any or all union representatives to attempt to negotiate all matters requiring clarification before the beginning dates specified. The canners desire to operate in 1940 if the unions will agree to conditions making such operations possible.

Herewith are the proposals and counter proposals of the operators.

1. Alaska Cannery Workers Union: The agree-

ment for operations out of San Francisco will be negotiated on a uniform basis at Seattle, with provisions to apply to all operations undertaken from California, Oregon and Washington. The San Francisco operators have authorized Alaska Salmon Industry, Inc., at Seattle, to represent them in those negotiations which are now in progress. In the event that satisfactory [217] agreements are reached for Central Alaska and those operations are undertaken or in the event that Bristol Bay operations are undertaken on an agreed basis, cannery workers will leave on the May 22nd expedition. Any employment, is, of course, contingent upon operation.

May we have your immediate reply to this communication.

Yours truly
ALASKA SALMON INDUSTRY, INC.
J. Paul St. Sure

To this letter the Unions sent the following reply:

San Francisco Bay Area District Council No. 2

April 8, 1940

Alaska Salmon Industry, Inc.,
230 California Street,
San Francisco, California.

Attention: Mr. J. Paul St. Sure

Dear Sir:

Please be advised that the unions affiliated to the

Bay Area District Council #2 of the Maritime Federation of the Pacific have, in meeting, taken your letter of April 3rd under consideration and have instructed me to forward the following information to your office.

The following motion was made and carried:

"That a letter be sent to the Alaska Salmon Industry, Inc., informing them that their proposals as submitted to the various unions affiliated to the Council are unacceptable to all organizations." And further,

"That all organizations, with the exception of one, namely, the Machinists, stand ready and willing to meet and negotiate on the basis of the proposed agreements that they have submitted."

I wish to point out further that it was the unanimous opinion of all delegations that new contracts can be negotiated if an honest effort to reach such an accord is made by the representatives of the Companies. It was their opinion that the action taken by the Companies in designating lawyers to conduct their negotiations, and said lawyers according to their own statements know nothing of the Salmon Packing Industry, does not make for a proper understanding and can only result in further complicating any amicable adjustment of differences.

In previous years negotiations were conducted by practical common sense men of the industry and agreements were successfully concluded. In view

of this, the Committee was of the opinion that the injection of the attorneys as negotiators can only be interpreted as an expression of bad faith on the part of the Packers.

The joint negotiating committee also went on record as requesting an answer to our letter of March 1st, in which we stated our position in reference to not sailing this season with Doctors Peterson, W. W. Peterson, and Schranke.

You may rest assured that the negotiating committee of the various unions is at your disposal whenever your committee is desirous of meeting with them and discussing the proposals that they have submitted.

I would like to suggest that due to the lateness of the time and because it will be necessary to have reached tentative agreements with all Council unions before any agreements will be signed, that such [218] negotiations proceed at the earliest possible time.

Very truly yours,

BAY AREA DISTRICT COUNCIL #2 MARITIME FEDERATION OF PACIFIC

REVELS CAYTON

On the same day, April 8th, the Employers telegraphed the Union they were ready to further negotiate.

A meeting was held on April 10th. At this meeting, the Employers asked that the Union execute a

memorandum agreement to be effective in the event an agreement could be reached with a number of other Unions with whom negotiations were then pending; this memorandum was intended to bind the Union to abide by any agreement that might be negotiated in Seattle. The Union refused to execute such an agreement, saying it would await the outcome of the Seattle negotiations.

No agreement having been reached between the parties by April 10th and 12th respectively, the operations at Karluk and Chignik by the Alaska Packers were abandoned for the 1940 season; upon request, the Employers, in writing, so notified the Union under date of April 22, 1940.

4. On April 26th (and after various meeting had been held) the Employers addressed a letter to the Union urging the necessity of action if an agreement to cover Bristol Bay operations was to be arrived at before the final date fixed, May 3rd.

On April 27th, the Employers, by letter, requested the Union to execute a memorandum agreement to cover Bristol Bay operations, as they had previously requested one for the Karluk and Chignik operations in view of the fact that the negotiations in Seattle had up to that time not resulted in a firm agreement.

A number of meetings were held and communications exchanged between the Employers and the Union between April 27th and May 1st. On May 1st, a meeting was held at which the Employers requested the Union to execute a memorandum to pro-

vide that in event no agreement were reached in Seattle that in 1939 Sattle agreement would be the basis for their compensation and working conditions during the 1940 Bristol Bay operations; the Union countered by insisting that if no new agreement were negotiated in Seattle, the San Francisco 1939 agreement should be the basis for their 1940 compensation and working conditions. At the last minute attempts were made to come to an understanding; the Union insisted upon a renewal of their 1939 agreement, while the Employers insisted upon the acceptance [219] by the Union of the so-called "1939 Seattle agreement", the provisions of which were less favorable to the Union than the 1939 San Francisco agreement.

(Eventually a new agreement was negotiated at Seattle but this expressly excluded operations out of San Francisco and only covered Cannery Workers locals from Seattle and Portland.)

No agreement having been reached between the parties by midnight of May 3rd, all Bristol Bay operations were abandoned by the Employers.

While the aforesaid negotiations were progressing, the Employers made the preparations usually made by Central Alaska and Bristol Bay operators in anticipation of their annual operations in those waters; they purchased large quantities of cans, can-ends, rope, cotton and linen webbing, lumber, and other supplies and equipment to the value of about four hundred thousand dollars and they put their ships in readiness for their usual annual trips;

in anticipation of their 1940 operations they declined to charter their ships and it was their intention to use the same number of them in their 1940 operations as had been used in 1939, with the exception of one major ship.

There is no evidence to support the Union's contention that the Employers acted in bad faith in the course of the negotiations.

Counsel for the Union, in their brief express the opinion that the Employers did not negotiate in good faith, that they never intended to operate in 1940, that the negotiators simply went through the form and that since there was to be a definite curtailment of fishing the Employers used that as a lever to depress wages and conditions of the Union to the point where it would mean surrender of much that had been gained by it during years of struggle.

The opinion is not founded in fact. The grounds upon which it rests, as shown by the evidence, are because:

(a) The Employers formerly negotiated the annual agreements by their executive officers who were experienced cannerymen while this year, under the new set-up they were negotiated by Salmon Industry, Inc., acting through two representatives, one of whom is an attorney, the other an experienced businessman;

(b) on account of the 1940 restrictions on fishing, imposed by the Bureau of Fisheries, the 1940 operations were expected to prove unprofitable and

the Employers had an opportunity to charter their cannery ships at profitable rates; and [220]

(c) during the two months of negotiations, only 18 meetings were held in Seattle and four in San Francisco.

None of the grounds urged impresses me. The fact that the wage negotiations were transferred from San Francisco to Seattle left little to be discussed at the latter place; it was admitted that after this happened only matters of minor consequence were considered in San Francisco.

In view of the uncontradicted evidence of the Employers (except Alaska Salmon Canning Co.) to the effect that they made practically the same preparations for the 1940 season as had been done in former years, there was left little room to doubt their good faith.

The evidence shows that the Alaska Packers, held in readiness their fastest steamer for their contemplated Karluk and Chignik operations; they purchased supplies and equipment, to be used in Karluk, Chignik and Bristol Bay canneries to the amount of nearly four hundred thousand dollars; these supplies (at the time of the hearing, June 19th, 1940) were still in their warehouses in San Francisco "for the inspection of anybody who desires to see them"; (see Tr. pg. 266) they purchased cans, can ends, lumber fibre boxes, caterpillar trucks, piling, linen and cotton webbing, rope, box shooks, laundry equipment demanded by the Unions, blankets, motors and other items of equip-

ment all of which, "are on hand and available for anybody to examine who wishes to." It was admitted that the Alaska Packers intended to carry on their 1940 operations with one less major vessel than had been used during previous seasons.

The manager of the Red Salmon Company testified:

"Q. Did your company want to go to Alaska?

A. Well, we had been operating for 45 years and the only time we haven't gone is when the government prevented an operation in 1935; our Board of Directors instructed me to prepare for an operation. We made every effort possible to go to Alaska this year. In the Spring of 1940 we had opportunities to charter our two vessels used in our Alaska operations on a favorable basis. We did not accept such offers to charter; about January, our Board of Directors instructed me not to entertain any charters or do anything that would interfere with the 1940 operations, that is, the salmon canning operations; we did entertain one charter with the stipulation that they be back by the middle of April, and we, as a part of the terms insisted they put up, I think, a hundred thousand [221] dollar bond, or something like that, for any delay at all; but that was one of the reasons the charter was not accepted."

"At the request of the Unions, we made changes in our ship for that particular voyage (to Alaska) and installed equipment which would not have been installed just to charter; we went ahead on the defi-

nite assumption we would go to Alaska this year and did everything necessary which should be done or had to be done prior to May 3rd: we decided upon the outfitting for our two canneries; how many cases we would prepare to pack; we arranged credits at the bank for the amount of money we thought we might need; we drew up a complete budget as to any improvements that were needed; we bought a power scow which is now in Seattle; we bought our nets; cans; bought casing and loading equipment in the East, which we now have and have paid for. We will have insurance and taxes and interest on that equipment we bought many other things—we were prepared and would have gone had agreements been made by the date set." (Tr. pg. 292 et seq.)"

"On cross examination the witness stated that his company expects to use supplies and equipment purchased during the 1941 season, "if we can't sell it at a reasonable figure of what it cost us, we certainly will try to use it any way we can, the curtailment was not a factor in our negotiations with the Union * * * we were going under full operations."

It is common knowledge in Alaska and elsewhere that a cannery operator will not purchase tin cans, tin can ends (tops and bottoms), and fishing gear, unless he intends to use them during the season in which they are bought, nor will any businessman invest his capital in equipment which he does not expect to use in the ordinary course of his business.

There is no evidence to substantiate the claim that the Employers acted in bad faith during the negotiations; they were anxious and determined to reduce their operating costs while the Union insisted upon getting at least the same compensation and conditions as prevailed in 1939, pursuant to the San Francisco agreement.

Alaska Packers intended to carry on their usual operations at Karluk and Chignik during 1940 if an agreement had been reached and would have employed all its former employees there.

If an agreement had been reached between the Alaska Packers and the Union, one-third of the former employees of the Alaska Packers [222] in Bristol Bay would have become unemployed, on account of the curtailment prescribed by the Bureau of Fisheries and not on account of the possible existence of a labor dispute; which of their former employees would make up this one-third of unemployed cannot be ascertained from the record and, in the nature of things, could not be ascertained unless and until the actual "manning" of the Alaska Packers Bristol Bay plants had taken place.

The Red Salmon Canning Company determined to operate full capacity in Bristol Bay, due to the fact, as testified to by its general manager, "We knew that the Alaska Salmon Company was not going "to Bristol Bay during 1940" and we felt that, therefore, there would be no infringement upon the government curtailment program though we went on a full basis. We had every intention

of taking the same number of men this year that we took last year; in fact among the cannery workers we planned to take a few more." This company intended to make use of a portion of the fish that would have been allotted to the Alaska Salmon Company if it had carried on the operations in the Bay during 1940 and thereby expected to overcome the handicap of the curtailment program.

The Alaska Salmon Company, in 1939, and in previous years, had operated in Bristol Bay. It participated in the 1940 negotiations up to about the end of April when it gave notice to all interested parties that it had abandoned its plans and would not operate during that season. This decision was reached not as a result of inability to negotiate an agreement with the Union; it was reached prior to the termination of the negotiations and while failure to reach an agreement may have had its bearing upon the decision, the fact is fairly established that other reasons, not necessary to state here, induced it.

All operations contemplated by the Employers and the Union for 1940 were abandoned for the reason that a mutually satisfactory working agreement was not negotiated by the dates set by the Employers, as the "dead line" for the respective districts, to-wit,

For Karluk: April 10th, 1940.
For Chignik: April 12, 1940.
For Bristol Bay: May 3, 1940.

When the negotiations ended in a deadlock, the annual season for the respective operations as fixed by the Alaska Unemployment Compensation Commission (Benefit Regulation No. 10) had commenced at: [223]

Karluk: April 5th, 1940.

Chignik: April 1st, 1940; and was about to commence at Bristol Bay: May 5th, 1940.

To repeat, negotiations terminated with reference to:

Karluk on April 10th, 1940.

Chignik on April 12th, 1940.

Bristol Bay on May 3rd, 1940. [224]

OPINION AND DECISION

At the hearing before the Referee, all the parties, by their respective counsel, presented objections to the Initial Determination of the applicants' claims for benefits; by the initial determination, the Commission's Examiner found that the applicants were ineligible for benefits for a period of eight weeks after the date of the commencement of the 1940 season for the reason that a labor dispute was then in active progress at the plant of their last employer.

The objections are to the effect that neither the applicants nor the Employers had an opportunity to be heard at the initial determination.

When these objections were presented to the Referee, the following occurred:

Referee: In what respect are you damaged?

Mr. Resner (of counsel for applicants): Well, except that it puts the burden of proof upon us.

Referee: Not necessarily so, that is a matter that will be decided later on. Let me ask Mr. Madison, (of counsel for Alaska Packers and Red Salmon Company) in what respect are you damaged if we proceed now and do not continue this hearing?

Mr. Madison: I don't know that I am damaged in any respect. It would depend entirely upon how the matter proceeds. I am perfectly willing to proceed as long as it is understood we are not waiving any rights we may have to object later on.

Mr. Resner: Well, it is understood we are not.

Mr. Oliver (Counsel for Alaska Salmon Canning Co.): I am perfectly willing to go on that same basis."

Pursuant to stipulation and understanding with Counsel for the respective parties the sole question before the Referee is to determine whether or not the facts show that at the commencement of the canning season in 1940 a labor dispute was in active progress at the plants at Karluk, Chignik and in Bristol Bay being the plants operated by the Employers in 1939 and at which the members of the Union were then employed.

This is the only issue considered by the Referee and his decision herein is not to be construed as affecting claimants' eligibility (or that of any one of them) for benefits under any other provision of the [225] Alaska Unemployment Compensation Law.

The case of a representative claimant was submitted as a typical test and it was stipulated that the testimony taken and the decision of the Referee on the basis of the record and evidence should apply to all the members of Local No. 5, who had made applications for benefits.

This brings us to a consideration of the applicable section of our Unemployment Compensation law.

Section 5(d) as amended by the Act of January 17, 1939, reads:

Section 5: An individual shall be disqualified for benefits:

(d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided, that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute; and provided further, that this subsection shall not apply, if it is shown to the satisfaction of the Commission that:

(1) He is not participating in or directly interested in the labor dispute which caused his unemployment; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the dispute, there were members employed at the premises at which the dis-

pute occurs, any of whom are participating in or directly interested in the dispute.

It will be noted that before the section was amended in 1939 disqualification followed upon a finding by the Commission that the unemployment is due "to a stoppage of work which exists because of a labor dispute" at the factory establishment or other premises at which the employee is or was last employed. (See Section 5(d) Unemployment Compensation Act of 1937.) It will be further noticed that under the former section the disqualification continued during the entire period work was stopped due to a labor dispute, while under the amendment, disqualification, on account of the existence of a "labor dispute in active progress" cannot exceed eight weeks.

What is the purpose of the amendment and why was it adopted? By it the legislature deleted the phrase (unemployment) "due to a stoppage of work which exists because of a labor dispute" and inserted, in lieu thereof, (unemployment) "due to a labor dispute which is in active progress." The amendment was adopted to cover a situation where a serious labor dispute exists yet it does not result in stoppage of work at the plant—the Employer with the help of those who remain after a strike has been called and with such additional help as he may be able to recruit, continues his operation in spite of the dispute and in spite [226] of the existence of a strike; in such a case, the men involved in the dispute, then in progress, if

they have become unemployed on account of it, are disqualified to receive unemployment benefits; the advocates of the amendment further claimed that the period of disqualification, due to the existence of a labor dispute, should be limited to a definite time and as the records of the United States Department of Labor show that few strikes last over eight weeks, this period was adopted.

The Alaska Act does not define "Labor Dispute" nor what constitutes a "Labor dispute in active progress."

The National Labor Relations Act, "Wagner Act") defines "labor dispute" as follows:

> "The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

A fair consideration of all the evidence submitted leaves no escape from the conclusion that a labor dispute existed and was in active progress between the Employers and the Union up to the expiration of the dates fixed by the Employers for the consummation of working agreements for the respective plants.

The crucial question is. Did the labor dispute continue after these dates and, if so, when did it terminate, if it became terminated at all?

A dispute, or other transaction, it would seem, continues in active progress when one or the other or both disputants, or parties to it, are active concerning it, not passive, when action is taken in relation to it and not when it is permitted to become dormant, for whatever may be the reason. In this case, nothing was done with the matters in dispute after the expiration of the respective dates mentioned, in fact there is a plain implication in announcing these dates that after their expiration no further efforts would be made to bring about an agreement and that the incident would be considered at an end, closed, and disposed of. And so it was treated by both parties. No action was taken by either of them to resume negotiations, no strike was called by the Union nor did the Employers declare a lockout. Both parties ceased from doing anything concerning the situation.

If, as claimed by counsel for the Employers, the dispute continued at least as long as the 1940 season, we may ask: When did it end? [227] Why limit it to the 1940 season? If the Employers were to decide in 1941 not to operate because no agreement was reached in 1940, would not the dispute then be held to be in active progress during that season also and the men remain unemployed on that account and, under the argument of the Employers would continue to remain unemployed until the Employers decided to commence operations again. Like Banquo's ghost, or John Brown's soul, the dispute would walk or march until the Employers saw fit to lay it low.

The Employers called off the 1940 operations and thereby put an end to the negotiations and the dispute which had raged between them and the Union. The operations have been abandoned, what was there to dispute about? The matter had become a closed incident—"a dead horse" as the man in the street would say.

In the brief of counsel, numerous references are given to definitions of what constitutes a labor dispute, but none is found dealing with the precise point under consideration and it is fair to say there is none.

Cases are found in the books where miners, in the Apalachian Fields, had contracts with their employers similar in some respect to those entered into between the Union and the Employers in this case and it has been held in Tennessee, which has disqualifying provisions like the one found in our act and now under consideration, that coal miners, during a cessation of activities, were deemed unemployed because of a labor dispute in active progress when the employer and the Union could arrive at no agreement within a period set aside for negotiations and the mines were shut down and remained shut down up to the time of the hearing and they were held disqualified for benefits on account thereof.

These cases are readily distinguishable from the case at bar. In the Miners' case the operations were not seasonal and the dispute was carried on and continued until the re-opening of the mines. In our case there was no possibility of a re-open-

ing; the time to get ready to catch the fish which the Union was expected to put up had passed and the particular operation had on account thereof become impossible. There was here no time for reconsideration; the die was cast and the Rubicon crossed; there was no possibility of turning back the clock. Preparations for the 1940 operations, if to be carried on at all, were unalterably set to begin at a definite time fixed [228] by the Employers. After that time, they became impossible of performance. The time having expired without reaching an agreement, the operations were called off, the negotiations terminated and the active progress of the labor dispute which had raged for a couple of months came to an end.

It is my opinion that the labor dispute ceased to be in active progress with reference to the Karluk situation on April 10th—five days after the opening of the annual season there; it ceased to be in active progress at the Chignik plant on April 12th—twelve days after the opening of the season there and it ceased to be in progress with reference to operations in Bristol Bay May 3rd,—two days before the opening of the season there, as fixed by Benefit Regulation 10 promulgated by the Alaska Unemployment Compensation Commission and that claimants became unemployed after those dates, not account of the existence of a labor dispute in active progress but because there was no employment to be had at these places and that a disqualification on account of the existence of a labor dispute in active progress, after the respec-

tive dates mentioned, is not justified under the facts as found and the law as I believe it to be.

The Referee is conscious of the fact that his conclusion, if sustained by the Commission or the Court, will mean the practical exhaustion of the Unemployment Compensation fund of the Territory but this is due to the wording of our Unemployment Compensation Act and not to any other cause and is a matter for the Legislature to consider and not the Referee.

For the reasons hereinbefore stated, the Referee determines: First: That from April 5th to April 10th, 1940, a labor dispute was in active progress with reference to the operation of the Karluk plant operated in 1939 by the Alaska Packers Association;

Second: That from April first to April twelfth, 1940, a labor dispute was in active progress involving operation of the Chignik plant operated in 1939 by Alaska Packers Association;

Third: That at the time of the commencement of the season in Bristol Bay no labor dispute was in active progress at any of the plants operated in that District in 1939. [229]

It follows that:

First: The claims filed by the 1939 Karluk employees for unemployment compensation for the period between April 5th to April 11th, 1940, should be denied;

Second: The claims filed by the 1939 Chignik employees for unemployment compensation for the

period between April 1st and April 13th, 1940, should be denied;

Third: That the claims filed by the 1939 Bristol Bay employees for unemployment compensation after May 5th, 1940, should be allowed; and

Fourth: That the claims filed by any of the 1939 Karluk and Chignik employees after the respective dates mentioned should be allowed; all of said claims to be subject to the statutory waiting period and other provisions of the Alaska Unemployment Compensation Law concerning eligibility to unemployment compensation of all or any of the claimants.

September 21, 1940. [230]

Before the Unemployment Compensation Commission of Alaska

Starting November 14, 1940, at Juneau, Alaska

In the Matter of the Claims

of

FRANK L. ARAGON, and other applicants, Members of the Alaska Cannery Workers Union, Local No. 5,

Applicants,

and

ALASKA CANNERY WORKERS UNION LOCAL No. 5,

On behalf of Applicants,

FOR UNEMPLOYMENT BENEFITS.

ALASKA PACKERS ASSOCIATION, RED SALMON CANNING COMPANY & ALASKA SALMON COMPANY,

Respondents.

DECISION ON APPEAL

of

Alaska Unemployment Compensation Commission (Juneau, Alaska.)

"Appeal Tribunals. To hear and determine disputed claims, the Commission shall appoint one or more impartial appeal tribunals consisting in each case of a referee selected in

accordance with Section 11(d) of this Act. No Person shall participate on behalf of the Commission in any case in which he is an interested party".

(Section 6(d) Alaska Unemployment Compensation Law.)

The statutory provisions involve Section 5 (d) of the Alaska Unemployment Compensation Law, Chapter 4, Extraordinary Session Laws of 1937, as amended by Chapters 1 and 51, Session Laws of Alaska, 1939.

* * * * * * *

This matter came on to be heard before the Alaska Unemployment Compensation Commission, upon an appeal by the respondents-employers, from a determination of the same made by a referee. The referee having found valid the claims of various claimants-appellees of the employers-respondents.

From the record of the testimony taken before the referee, and [231] various exhibits filed with him, it appears that the contentions of the respective parties are as follows:

The employees-appellees, having taken no objections, exceptions or appeal from the findings and conclusions made by the referee, agree with the same.

The employers-respondents claim that the unemployment of the claimants-appellees is due to a labor dispute which was in active progress at the factory, establishment or other premises of which said claimants, and all of them, were last employed during the seasonable working period of

the salmon cannery industry of the Territory of Alaska, as set forth in said Commission's Regulation No. 10.

The stipulation entered into between the parties provides there should be one, and only one, brief filed on behalf of the employees and the employers, and that no oral argument be made before the Commission.

After a careful examination of the testimony adduced before the referee, the exhibits filed with him and the briefs submitted by the interested parties, the Commission makes the following,—

FINDINGS OF FACT

and

REASONS FOR DECISION:

That all of the claimants-appellees were employees of the employers-respondents during the seasonable canning season as set out in Regulation No. 10 of the Alaska Unemployment Compensation Commission for the year 1939. That the employers-respondents notified the various claimants-appellees, through their duly appointed agents, of the cancellation of the working agreement of the year 1939, and of the necessity of entering into a new working agreement for the canning season of 1940. That the agents of the claimants-appellees admitted receipt of the notification of such cancellation, and thereafter entered into negotiations for the canning season of 1940.

That this industry is a seasonable industry, rec-

ognized as such by this Commission in setting forth in its Regulation No. 10, the dates for which unemployment compensation could be allowed by the Commission. That the claimants-appellees were fully aware of this condition, as were the employers-respondents. That the dates of operation of canneries in the various sections involved in this controversy, as set out in said Regulation 10, which was adopted by the Commission November 6, 1938, are as follows: [232]

Kodiak Island District, which includes all operations on the Karluk River, one season, April 5th to September 25th;

Alaska Peninsula District, which includes all operations at Chignik, one season, April 1st to September 10th; and

Bristol Bay District, which includes all operations in Bristol Bay, one season, May 5th to August 25th.

That the following the notification by the employers-respondents to the claimants-appellees that the employers-respondents elected to cancel the working contract entered into between said parties for the canning season of 1939, and that the same would not be in force for the canning season of 1940, and the necessity of entering into another agreement, negotiations for such an agreement were entered into between said parties and were in active progress at the opening of the canning season as set forth in said Regulation No. 10. That there is evidence before this Commission that no agreement was ever entered into between the interested parties prior to the opening of the season or thereafter.

In the Declaration of the Territorial Public Policy set forth in the first paragraph of the Act creating the Unemployment Compensation Commission, Chapter 4 Extraordinary Session Laws of 1938 as amended by Chapters 1 and 51, Session Laws, 1939, the Legislature of Alaska declares:

> "The Legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this Territory, require the enactment of this measure under the police power of the Territory, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own".

The question to be decided by this Commission is if the claimants-appellees are entitled to the benefits of unemployment compensation, as provided for by said Act, through no fault of their own.

CONCLUSION AND DECISION

We conclude that the claimants-appellees and the employers-respondents were engaged in a seasonable industry;

That there was an active labor dispute existing between said parties at the opening of the season; that said dispute continued, and that paragraph (d) under Section 5, under the title "Disqualification for Benefits" provides: [233]

> That any individual shall be disqualified "For any week with respect to which the Commis-

sion finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided that such disqualification shall shall not exceed the 8 weeks immediately following the beginning of such dispute"——

And that each claimant-appellee, is entitled to receive, if otherwise eligible, unemployment insurance as follows:

At the Karluk Cannery eight (8) weeks after April 5th; at the Chignik Cannery, eight (8) weeks after April 1st, and at the Bristol Bay Cannery eight (8) weeks after May 5th, said eight weeks disqualifying period being in addition to the two (2) weeks regular two weeks waiting period, and if otherwise eligible.

The Decision and Conclusion of the referee are hereby reversed, and benefits allowed in accordance with the Commission's initial determination.

Absent from this hearing, one member of the Commission, viz, Dr. Noble Dick.

Dated at Juneau, Alaska, this 18th day of November, 1940.

ALASKA UNEMPLOYMENT COMPENSATION COMMISSION.

By: R. E. HARDCASTLE,
Chairman.

Attest: R. S. BRAGAW,
Secretary. [234]

[Title of District Court and Cause.]

PETITION FOR REVIEW

Of Decision of Unemployment Compensation Commission of Territory of Alaska

(Pursuant to Alaska Unemployment Compensation Act, Ch. 4, Extraordinary Session Laws of 1937, as amended by Cha. 1 and 51, Session Laws, 1939 (Section 6 (i)) [235]

Plaintiffs and each of them file this, their Petition for Review of a Decision of the Unemployment Compensation Commission of Alaska, and in support thereof present and show the following:

I.

That this is a Petition for Review of a decision of the Unemployment Compensation Commission of Alaska made on November 18, 1940 in the case titled "Frank L. Aragon, and other Applicants, Members of the Alaska Cannery Workers Union, Local No. 5, Applicants, and Alaska Cannery Workers Union Local No. 5, on behalf of Applicants, For Unemployment Benefits, and Alaska Packers Association, Red Salmon Canning Company, and Alaska Salmon Company, Respondents", which decision was adverse to petitioners herein.

That a copy of said Decision is attached hereto and marked Exhibit "A", and is hereby expressly referred to and incorporated herein and made part hereof by this reference the same as though fully set forth hereinafter.

II.

That this Petition for Review of said Decision is brought pursuant to and this Court has jurisdiction under the Alaska Unemployment Compensation Act (hereinafter called the Act), Chapter 4, Extraordinary Session Laws of 1937, as amended by Chapters 1 and 51, Session Laws, 1939, Section 6 (i), of the Territory of Alaska.

III.

That the defendant Unemployment Compensation Commission of Alaska (hereinafter called Commission) is, and during all the times herein mentioned was the body duly created and authorized by the Act to administer said Act, and the defendant R. E. Hardcastle, R. S. Bragaw and Noble Dick are, and during all the times herein mentioned were the duly qualified and acting members of, and constituted said Commission, and rendered the Decision referred to in Paragraph I. That said Commission and Commissioners maintain their office at Juneau, Territory of Alaska.

IV.

That defendant Alaska Packers Association is a corporation which is and for a number of years last past has been engaged in the taking and canning of salmon in the Territory of Alaska and is subject to [236] the Act. That said company was a respondent and party to the proceeding before the Commission mentioned in paragraph I herein, and is therefore made a defendant herein as required by Section 6 (i) of the Act.

V.

That defendant Red Salmon Canning Company is a corporation which is and for a number of years last past has been engaged in the taking and canning of salmon in the Territory of Alaska and is subject to the Act. That said company was a respondent and party to the proceeding before the Commission mentioned in paragraph I herein, and is therefore made a defendant herein as required by Section 6(i) of the Act.

VI.

That defendant Alaska Salmon Company is a corporation which is and for a number of years last past has been engaged in the taking and canning of salmon in the Territory of Alaska and is subject to the Act. That said company was a respondent and party to the proceeding before the Commission mentioned in paragraph I herein, and is therefore made a defendant herein as required by Section 6(i) of the Act.

VII.

That Alaska Cannery Workers Union, Local No. 5 (hereinafter called the Union) is an unincorporated association and labor union and throughout the proceedings mentioned in paragraph I herein appeared for and on behalf of individual petitioners who at said time were and still are members of said Union, and the Union appears in this action for review for and on behalf of all individual petitioners involved in said proceeding mentioned in paragraph I.

VIII.

That Frank L. Aragon and all the other individual petitions are workers in the Alaska Salmon industry and during the 1939 Alaska salmon season various individual petitioners were employed by Alaska Packers Association, various individual petitioners were employed by Red Salmon Canning Company, and various individual petitioners were employed by Alaska Salmon Company, and which of said individual petitioners were employed by which of said companies, is a matter of record in the files of the Commission, which records are hereby referred to and incorporated herein and made a part hereof by this reference. That the names of all said individual petitioners are not listed herein, but this Petitioner for Review is brought by and on [237] behalf of all such individuals who were parties to or whose right to benefits were determined in the proceedings mentioned in paragraph I herein. That the names of said individual petitioners are not listed herein because it was ruled by the Commission that the decision in the case mentioned in paragraph I would apply to all claimants who had filed for benefits with the Commission who are members of the Union insofar as the eight weeks' disqualification for alleged labor dispute within the meaning of Section 5(d) of the Act is concerned, and that since this is a Petition for Review it is unnecessary to list herein all such individual petitioners. In connection with the allegations of this paragraph, reference is made to the correspondence in the files of the Commission between the Commis-

sion, the Union, and counsel for the Union on the subject that these proceedings apply to and will determine the rights of all claimants who are members of the Union, and reference is further made to the ruling of the Special Referee which appears at page 7 of the Transcript of the proceedings described in paragraph IX herein, and said correspondence and ruling are incorporated herein by this reference and made part hereof the same as though they were fully set forth herein.

IX.

That on June 17, 18, and 19, 1940, a hearing was held in San Francisco, California before Henry Roden, Esq. who was designated by and served as Special Referee for the Commission pursuant to the provisions of the Act to determine the question of the labor dispute disqualification, if any, of applicants (petitioners herein). That at said hearing the individual petitioners, and the Union in their behalf, appeared and offered evidence to support their contention that petitioners were not disqualified on account of any labor dispute in active progress within the meaning of Section 5(d) of the Act, and the defendant canning companies appeared and contested the contention of petitioners. That thereafter and on September 21, 1940, Referee Roden rendered his decision that there was a "labor dispute", but that it was not in "active progress" at Karluk after April 10, 1940, nor a Chignik after April 12, 1940 and that at Bristol Bay there was no "labor dispute" in "active progress" at the time

the season opened, to wit: on May 5, 1940; and that applicants (petitioners herein) should be paid benefits accordingly. That the decision of Referee Roden which is on file with the Commission in this case is hereby expressly referred to, incorporated [238] herein and made part hereof by this reference the same as though fully set forth herein.

X.

That defendants Alaska Packers Association, Red Salmon Canning Company, and Alaska Salmon Company on October 3, 1940, filed notice of appeal with the Commission from the decision of the Referee mentioned in paragraph IX herein. That said appeal was thereafter by the Commission heard and determined as described in paragraph I herein, and the decision of the Referee was reversed by the Commission.

XI

That petitioners have exhausted their administrative remedy before the Commission as provided by the Act and as required by Section 6(h) of the Act before bringing this action for judicial review.

XII.

That pursuant to the provisions of Section 6(i) of the Act, petitioners state the following as grounds upon which this review is sought and for which the decision of the Commission mentioned in paragraph I should be reversed:

1. CERTAIN FINDINGS OF FACT MADE BY THE COMMISSION ARE NOT SUPPORTED BY THE EVIDENCE.

a. The Commission found as a fact that "negotiations for (a 1940) agreement were entered into between said parties (employers and union) and were in active progress at the opening of the canning season as set forth in said Regulation No. 10." (Our underlining.)

Argument and exception to said finding:

(1) Regulation No. 10 provides that the Bristol Bay season was to open on May 5, 1940. The evidence offered by the employers themselves (and petitioners do not dispute it) shows that the negotiations for the Bristol Bay operations terminated at midnight May 3, 1940, and that the employers abandoned the season at that time which they had fixed as their "deadline" to reach a 1940 agreement with the Union. (See Employers' Exhibit "X", Applicants' Exhibit "19", Tr. p. 226, 228, 232, testimony of J. Paul St. Sure. See also decision of Special Referee Henry Roden, p. 2, and p. 10, finding that negotiations for Bristol Bay terminated at midnight May 3, 1940, and that the employers abandoned the Bristol Bay Season at that time.) [239]

It follows without answer that the Commission's finding of fact that negotiations were in active progress at the opening of the season as fixed by Regulation No. 10 is in error and not supported by the evidence insofar as the Bristol Bay operations are concerned.

(2) In addition, the Alaska Salmon Company abandoned its entire 1940 operations on April 30, 1940, five days before the season at Bristol Bay opened. (See Applicants' Exhibit "2".) This company operates only at Bristol Bay. (Tr. p. 304, testimony of Mr. Peterson.) It follows that the applicants employed in 1939 by Alaska Salmon Company are unquestionably entitled to benefits, and the Commission's finding is in error insofar as the Commission finds that Alaska Salmon Company was carrying on active negotiations at the time of the opening of the Bristol Bay season as fixed by Regulation No. 10.

We conclude that there were no negotiations for Bristol Bay after May 3, 1940 and that all applicants employed at Bristol Bay in 1939 are without question entitled to benefits for the full season and are subject to no labor dispute disqualification. This includes all the 1939 employees (members of the Union) of Alaska Salmon Company and Red Salmon Canning Company, who operate only at Bristol Bay; and those employees of Alaska Packers who were employed at Bristol Bay in 1939.

b. The Commission found as a fact that the employers notified the applicants "of the necessity of entering into a new working agreement for the canning season of 1940." (Our underlining.)

Argument and exception to said finding:

(1) Insofar as this finding means that a new agreement was to be reached between the parties for the 1940 season is there was to be operation by the San Francisco operators, the finding is proper

and supported by the evidence. But insofar as it leaves the inference that the operators were ready to sign an agreement but the Union was not, the finding is not supported by the evidence. The operators wanted to sign a 1940 agreement on terms less favorable to the Union than the Union enjoyed in 1939. The onus cannot be placed on the Union for failing to arrive at an agreement. The blame, if it belongs anywhere, rests with the [240] employers who without justification or reason wanted the Union to accept less favorable terms and conditions than the workers enjoyed in 1939, while the Union wanted at least a renewal of the 1939 agreement. The applicants were at all times ready, willing and able to work on 1939 wages and terms. (See Tr. p. 333, p. 335-336.) The use of the word "necessity" is therefore not supported by the evidence insofar as the inference is left that the employers were not at fault in the failure of the parties to reach an agreement for the 1940 season.

(2) Alaska Salmon Company abandoned *it* 1940 operation on April 30, 1940 (Applicants' Exhibit "2"), and would not have operated during 1940 irrespective of whether there had been or had not been an agreement with the Union. (See Tr. p. 320, stipulation by Mr. Oliver, counsel for Alaska Salmon, to that effect.)

It follows that the operators and particularly Alaska Salmon Company did not find it "necessary" to reach an agreement for the 1940 season.

2. THE CONCLUSIONS OF LAW AND DECISION ARE NOT SUPPORTED BY THE FINDINGS OF FACT.

(a. The Commission concluded that "there was an active labor dispute existing between the parties at the opening of the season."

This conclusion must be separated into its two parts: first, that that was a "labor dispute" and second, that there was an "active labor dispute at the opening of the season".

The Commission's "findings of fact" can be briefly summarized as follows:

1. That all applicants were employees of the employers during the 1939 seasonal canning industry as provided in Regulation No. 10.

2. That the employers cancelled the 1939 agreement with the Union.

3. That the employers notified the Union of the "necessity" of entering into a new agreement for the 1940 canning season. [241]

4. That the Union admitted receipt of the notice of cancellation of the 1939 agreement.

5. That thereafter, negotiations for the 1940 season occurred.

6. That the salmon cannery industry is seasonal.

7. That dates for which unemployment benefits could be allowed were provided by Regulation No. 10.

8. That employers and applicants were aware of this condition.

9. That the dates of operation of the canneries

in the districts involved in this controversy as fixed by Regulation 10 are as follows:

Karluk: April 5-September 25;

Chignik: April 1-September 10;

Bristol Bay: May 5-August 25.

10. That following the notice of cancellation of the 1939 agreement by employers, negotiations for a 1940 agreement between the parties commenced.

11. That the negotiations were in active progress at the opening of the season as set forth in Regulation No. 10.

12. That no agreement was ever entered into between the parties prior to the opening of the season, or thereafter.

13. Quoting from the Declaration of Territorial Public Policy of the Act that benefits were to be paid to persons unemployed through no fault of their own.

(1) Petitioners submit that these findings do not support a conclusion that a "labor dispute" existed between the parties. All that can be concluded from the Commission's findings is that the parties negotiated for, but did not arrive at a 1940 agreement. We submit, that is not a "labor dispute" within the meaning of the Act. There are no findings to support a conclusion that a "labor dispute" existed.

(2) Plaintiffs submit that these findings do not support the conclusion that there was an "active labor dispute existing between the parties at the opening of the season". (Our underlining.) The Commission has failed to separate the various areas

of operation with regard to the opening of the season. For the sake of argument (but not admitting it) let us say a "labor dispute" occurred between the parties. The employers [242] abandoned the Chignik operation on April 12, 1940; the Karluk operation on April 10, 1940; and the Bristol Bay operation on May 3, 1940. After those dates, the employers and the Union did nothing with regard to the 1940 season for the respective areas. The parties dropped the matter, the employers called off the season, and in the words of Referee Roden, the parties treated the matter as a "dead horse." (See decision of Referee Roden, p. 2, pp. 17-18; Employers' Exhibits "U" and "X"; Applicants' Exhibits "2" and "19.")

Bear in mind that the seasons opened as follows:

Karluk, April 5th;
Chignik, April 1st;
Bristol Bay, May 5th.

While it may be argued that the "labor dispute" was in active progress with respect to Chignik and Karluk by reference to the above dates at the opening of the season in those areas, the same thing cannot be said for Bristol Bay. There the "dispute" terminated, the negotiations ended, and the season was abandoned on May 3, 1940 two days before the season opened. We submit that there was no "active labor dispute" at Bristol Bay at the "opening of the season" there.

Therefore, the conclusion that "an active labor

dispute existed between the parties at the opening of the season" is not supported by the findings of fact.

b. The Commission concluded that "the dispute continued". (Our underlining.)

That conclusion is not supported by the findings. There are no findings that the dispute (if there was one) continued to any particular day with reference to any of the three areas in question. Nor is there any conclusion regarding the day to which the "dispute" continued. For all that appears from the decision, the dispute still continues and will continue to continue, and there is no indication as to when it will end if ever. As a matter of fact, the dispute, if there was one, ended with regard to Karluk on April 10, 1940; at Chignik on April 12, 1940; and at Bristol Bay on May 3, 1940; all as noted above.

c. The decision reversing the Referee, and disqualifying petitioners for eight weeks each is in error, because as indicated above there are no findings to support a conclusion that a labor dispute existed, or that if there was a dispute, [243] that it continued beyond the dates mentioned for the respective areas; and the decision is in error in disregarding the uncontradicted evidence that the negotiations for Bristol Bay ended, and the season for that area was abandoned, on May 3, 1940, two days before the season was to open.

3. THE CONCLUSIONS OF LAW AND DECISION ARE NOT SUPPORTED BY THE EVIDENCE.

A. The conclusion that there was a "labor dispute" is not supported by the evidence.

The uncontradicted evidence shows that the Union did not declare a strike, and did not picket the employers, and did not strike or picket because there was no operation to strike or picket; that there was no employer-employee relationship existing between the parties at the beginning of the 1940 season; that the last time the petitioners were employees of the employers or on their payroll was at the conclusion of the 1939 season, and when that season ended, the employee-employer relationship between the parties ended.

The evidence further shows that the employers wanted the Union to accept a reduction of the 1939 San Francisco contracts, and only offered the Union either the 1939 or 1940 Seattle agreement, whichever was most favorable to the Union. That the employers never retreated from this stand. That the Union proffered a 1940 contract which was more advantageous to it than the 1939 San Francisco contract. That this was rejected by the employers, and the Union finally offered to re-execute the 1939 San Francisco contract, which the employers refused. That the Employers abandoned their respective operations as their stated "deadlines" occurred; Karluk, April 10, 1940; Chignik, April 12, 1940; Bristol Bay, May 3, 1940. That thereupon the matter was dropped by both parties, and nothing

further was done between them with regard to the 1940 season. There were meetings between the parties for negotiation purposes. The evidence shows that the negotiations were carried on in a friendly manner. The petitioners were ready, able and willing to work in 1940 on the same wages and conditions that they enjoyed out of San Francisco in 1939. That Alaska Salmon Company would not have operated in 1940 even if an agreement had been reached with the Union. That the Alaska Packers were going to curtail their operations and employment at Bristol Bay one-third on account of the government [244] ordered curtailment in fishing.

We submit that these facts do not show a "labor dispute" within the meaning of the Act.

b. The Conclusion that there was an "active" labor dispute is not supported by the evidence.

It has been fully stated hereinabove (and reasons and citations given) that if there was a dispute, it was not in active progress at Karluk after April 10, 1940;; nor at Chignik after April 12, 1940; nor at Bristol Bay after May 3, 1940. So Referee Roden found, and the evidence and reason support that finding (Decision of Referee, pp. 17-18) and the Commission does not examine nor dispute this finding. The Commission merely lays down an unsupported conclusion and fiat that a dispute was in "active" progress.

The Act provides that a labor dispute, to disqualify an applicant, must be in active progress with respect to "any week" for which the applicant

is disqualified. In other words, if there is a dispute in existence for one week, that disqualifies the applicant only for that one week, but not thereafter. Therefore, if there was a dispute, it ended at Karluk on April 10, 1940, and at Chignik on April 12, 1940, and applicants last employed in 1939 in plants at those areas are not disqualified after those dates that the dispute was not in "active" progress.

With regard to Bristol Bay, the dispute ended on May 3, 1940 two days before the season opened. Petitioners would not be entitled to benefits until the season opened on May 5, and at that time there was no dispute in active progress. The dispute was then a thing of the past. Therefore, there is no disqualification with regard to the employees who were last employed in 1939 in Bristol Bay.

Furthermore, an "active" labor dispute, means a strike and picket line, an operation which is interrupted by such dispute. It is admitted that there was neither strike nor picket line here, nor could there be, because the workers never started to work in 1940; there was no job to strike; no employer-employe relationship to terminate. Therefore, there was no labor dispute in "active" progress. A disputue in active progress would mean that there would be a way to end it, and therefore if the workers started it (thereby disqualifying themselves) they could end it, thereby removing the disqualification). But here, the employers abandoned the season on their "deadline" dates, and that was [245] all there was to the 1940 season so far as these petitioners are concerned.

c. The conclusion that the dispute "continued" is contrary to the evidence.

It has already been adequately set out herein that the dispute (if there was one) ended on the dates the employers abandoned their respective operations, and that the dispute became a dead letter on those dates. The Commission's conclusion that the dispute "continued" could mean that the dispute continued indefinitely and in fact still continues. That conclusion, or any conclusion that the dispute continued after the dates set out hereinabove, is contrary to the evidence.

d. The decision is in error in that there is neither finding nor conclusion that petitioners' unemployment during the 1940 salmon canning season was "due" to a labor dispute in active progress at the premises where last employed (which means at the conclusion of the 1939 season), and not "due" to other causes.

The Commission merely found a "labor dispute" and disqualified applicants. The Commission does not consider whether applicants were unemployed at Alaska Packers because of the curtailment. It is admitted that this company, if it operated during 1940, was going to hire one-third fewer workers than in 1939, at least at Bristol Bay operations. (Tr. p. 270, testimony of Mr. Tichenor.)

It is admitted that Alaska Salmon Company would not have operated in 1940 even had an agreement with the Union been signed. (Tr. p. 320) Therefore, it would follow that the Employees of Alaska Pack-

ers (at Bristol Bay) and Alaska Salmon would not be disqualified in any event because their unemployment would not be "due" to a labor dispute. Insofar as it would be difficult to determine which one-third of the employees last employed by Alaska Packers at Bristol Bay would be unemployed during 1940 because of the curtailment, the doubt must be resolved in favor of the applicants, because the Act is remedial in nature and therefore must be liberally construed so as to pay, and not to deny benefits, and therefore all applicants so employed in 1939 should not be subject to any "labor dispute" disqualification.

Finally, petitioners' unemployment is "due" to the seasonal lay-off; that is, petitioners became unemployed when the 1939 season ended, and never became reemployed for 1940. Therefore, their unemployment is due to the seasonal nature of their work, and not to any alleged labor dispute. [246]

4. THE FINDINGS OF FACT MADE BY THE COMMISSION COMPEL A DECISION CONTRARY TO THE ONE RENDERED.

The findings show that the employers cancelled the 1939 contract, and that negotiations occurred between the parties, but that the parties did not arrive at a 1940 agreement. Therefore, it appears that had not the employers cancelled the 1939 contract, operations would have taken place during 1940 on the basis of the 1939 contract which would have continued in existence. Therefore, the onus falls on the employers because it was their affirmative action which started the "dispute" and petitioners are unemployed not through their fault but because

of the employers' actions in attempting to undercut 1939 wages and conditions.

Nor do the findings of fact establish any labor dispute. They only show negotiations which were not consummated by agreement. They show no strike, no walk-out, no picket line, no presently existing employer-employee relationship terminated, in fact, no job to strike. It follows that the findings made, and the absence of other findings necessary to show a labor dispute, compel a decision that there was no *labor*

5. THE EVIDENCE AND A PROPER CONSIDERATION OF THE CASE REQUIRES FINDINGS OF FACT ON MATTERS WHICH THE COMMISSION IGNORED.

The Commission did not make findings on the following matters necessary to a proper consideration of the case:

1. What facts are necessary to show a "labor dispute" within the meaning of the Act? Must there be a strike, walk-out, presently existing employer-employee relationship terminated by dispute, picket line, a job to strike? What bearing does the absence of these factors have in the instant case?

2. Is petitioners' unemployment "due" to a labor dispute, or is it "due" to the curtailment in Alaska Packers' Bristol Bay operations, and the failure of Alaska Salmon to operate for reasons unconnected with labor, and finally is not the unemployment of petitioners "due" to the seasonal nature of

their work and the fact that they were never re-employed in 1940, rather than an alleged "labor dispute"?

3. If there was a dispute, how long did it remain in "active" progress? Did not the dispute terminate when the employers abandoned their operations, for Karluk on April 10, 1940; Chignik on April 12, 1940; and Bristol Bay on May 3, 1940? Was not the Referee [247] correct in so finding, and was not the Commission in error in not considering this fundamental finding, and indicating where it was wrong, if it was wrong?

4. In what way do negotations which do not result in a contract constitute a labor dispute within the meaning of the Act?

6. THE DECISION IS CONTRARY TO LAW.

1. The decision is wrong in holding that the facts in this case constitute a "labor dispute" within the meaning of the Act.

2. The decision is wrong in holding that there was a labor dispute in "active progress" within the meaning of the Act when the season opened, and that the dispute "continued".

3. The decision is wrong in holding that there was a labor dispute in "active progress" within the meaning of the Act after April 10, 1940, at Karluk, April 12, 1940 at Chignik, and after May 3, 1940 at Bristol Bay.

4. The decision is wrong in holding that petitioners' unemployment is "due" to a labor dispute.

The Commission has decided that where an employer cancels a collective bargaining agreement with a union and in its stead seeks to establish a contract giving lower wages and poor conditions to the workers and the workers refuse to accept the same, as a result of which the employers abandon operations in a seasonal industry, work for the new season never having started, that this constitutes a "labor dispute in active progress" for the entire season of said seasonal industry wthin the meaning of the Act, and disqualifies the workers for benefits for a period of eight weeks as provided by the Act.

In petitioners' opinion, this is a plain misinterpretation of the Act, is contrary to the better reasoned decisions on the subject of what constitutes a "labor dispute in active progress" within the meaning of the unemployment insurance laws, and violates the spirit and purpose of the Act. The facts in this case do not constitute a "labor dispute" within the meaning of the Act as a matter of law.

If the Commission's decision is allowed to stand, it is an invitation to employers to cut wages (even though no basis exists or is offered) and if workers refuse to accept the cuts, then they also shall be denied unemployment benefits. The Act would thus operate to hurt rather than help workers, as is its declared purpose. [248]

Unemployment laws are remedial in nature. They are to be liberally construed, and every intendment is in favor of paying benefits rather than denying them. All doubts must be resolved in favor of petitioners.

The "labor dispute" disqualification is included in the Act only so that these funds will not support a strike. The eight weeks period was fixed because the records and figures on labor disputes show that the average length of a strike is eight weeks. (See Decision of Referee, pp. 16-17) There was no "dispute" or "strike" here which unemployment funds were sought to finance. There was only a failure to negotiate a 1940 contract, and abandonment by the packers of the 1940 season, even though the workers were ready, willing, and able to work on the same contract that they had in 1939. Certainly the workers' position was a fair one. They were unemployed through no fault of their own, and if the blame belongs anywhere, it is with the employers who tried to cut wages and conditions. A liberal construction of the Act, and serving the purposes for which the Act was adopted compel a decision in favor of petitioners.

XIV.

That the Commission found that the "employees-appellees (petitioners), having taken no objection, exception or appeal from the findings and conclusions of the referee, agree with the same". Petitioners allege that since the employers appealed the case, the entire matter was opened on review to the Commission, and is similarly opened before this Honorable Court. That insofar as petitioners raise matters herein which are *it* issue with the findings and conclusion of the Referee, as well as of the Commission, they are not precluded from raising

those matters because they were satisfied to rest with the *Referee'* decision. Had employers taken no appeal from the Referee's decision, petitioners would have rested. Since the appeal was taken by the employers, petitioners took issue with various parts of the Referee's decision before the Commission, and renew those objections here.

Wherefore, petitioners pray judgment against defendants as follows:

(1) That this Honorable Court review and reverse the decision of the Commissioner insofar as petitioners were disqualified for a period of eight weeks each because of an alleged "labor dispute", [249] and find petitioners not disqualified for said alleged cause;

(2) That the decision of the Commission of November 18, 1940 be set aside, and that the decision of Referee Henry Roden of September 21, 1940 in the within matter be adopted by, and given effect by this Honorable Court; ;

(3) For costs of suit herein, and for such additional and further relief as is just and meet in the premises.

Dated: January 3rd, 1940.

ANDERSEN & RESNER

Attorneys for Petitioners.

[Endorsed]: Filed Jan. 7, 1941. [250]

[Title of District Court and Cause.]

Received January 8, 1941 Civil Docket No. 11211
For service by Deputy Thompson.

(No. 4620-A)

SUMMONS

To _____, Defendant--,

Greeting:

In the Name of the United States of America, You, and each of you, are hereby commanded to be and appear in the above-entitled Court, holden at _____ in said Division of said Territory and answer the complaint filed against you in the above entitled action, within thirty days from the date of the service of this summons and a copy of the said complaint upon you, and, if you fail so to appear and answer, for want thereof, the plaintiff--- will take judgment against you, and each of you, for the sum--- specified in said complaint, and will apply to the Court for the relief demanded therein, a copy of which said complaint is herewith served upon you. The relief demanded therein is,

PETITION FOR REVIEW

of Decision of Unemployment Compensation Commission of Territory of Alaska (Pursuant to Alaska Unemployment Compensation Act, Ch. 4, Extraordinary Session Laws of 1937, as amended by Chs. 1 and 51, Session Laws, 1939, Section 6 (i))

And you, the United States Marshal of Division No. 1 of the Territory of Alaska, or any Deputy, are hereby required to make service of this summons upon the said defendant---, and each of them, as by law required, and you will make due return hereof to the Clerk of this Court within forty days from the date of its delivery to you, with an endorsement hereon of your doings in the premises.

In Witness Whereof I have hereto set my hand and affixed the Seal of the above Court, at Juneau, Alaska, this 7th day of January, A. D., 1941.

[Seal] ROBERT E. COUGHLIN
Clerk.
By JOHN J. GILMORE
Deputy.

[Endorsed]: Filed Jan. 8, 1941. [251]

United States of America
Territory of Alaska
Division Number One.—ss.

I, William T. Mahoney, United States Marshal for the First Division, Territory of Alaska, hereby certify that I received the within summons at Juneau, Alaska on the 8th day of January, 1941 and that thereafter I served the within summons at Juneau, Alaska on the Defendants, Walter P. Sharpe, Executive Director of the Unemployment Compensation Commission, personally and in person on the 8th day of January, 1941 by then and there delivering

to and leaving with said defendant a copy of the within summons, together with a copy of the complaint in this case, which said copy of summons and complaint so served on defendant were duly certified to by Herbert Risner, Attorney for plaintiff to be true and correct copies of the original summons and complaint on file in the within cause.

Dated at Juneau, Alaska this 8th day of January, 1941.

WILLIAM T. MAHONEY,
United States Marshal.
By: SIDNEY J. THOMPSON,
Deputy.

Marshal's Fees $3.10. [251a]

[Title of District Court and Cause.]

RESPONDENTS' ANSWER TO PETITION FOR REVIEW.

1.

Respondents admit each and every allegation contained in Paragraphs I to XI, inclusive, of the Petition.

11.

Section 1 of Paragraph XII

Respondents in answer to the allegation in Section 1 of Paragraph XII of the Petition, deny that certain or any Findings of Fact made by the Commission are not supported by the evidence.

1-a-(1)

Respondents admit that the Commission made the finding mentioned in Sub-section 1a, thereof, which is as follows:

> "Negotiations for agreement were entered into between said parties and were in active progress at the beginning of the canning season as set forth in said Regulation 10." (Our underlining)

They also admit that the negotiations terminated two days before the opening of the Bristol Bay season, but not two days before the opening of the canning season. The Commission does not hold that the negotiations continued beyond the dates on which they terminated for the respective districts but refers to the beginning of the canning season generally, simply to show that negotiations were in progress as proof that a dispute existed prior to the actual period during which the fish could have been canned.

[252]

It is not material to this case. The question involved is whether the dispute continued in active progress and not whether the negotiations continued into the seasons for canning the fish. The negotiations were simply evidence of the dispute. If the dispute continued as to Chignik and Karluk, it also continued as to Bristol Bay work, for the whole decision is based upon a recognition of the continuance of the dispute even though negotiations terminated as to Chignik and Karluk soon after the season opened, and as to Bristol Bay just before

the season opened, the opening of the respective seasons being by Regulation 10 set as:

Chignik April 1st
Karluk April 5th, and
Bristol Bay May 5th
(See Regulation 10)

1-a(2)

The argument contained in Sub-section 1-a(2), regarding Alaska Salmon Company, is defeated by the same reasoning. The evidence shows this company abandoned its entire operations on April 30, 1940, and was not interested in any further negotiations, but the dispute continued just the same as it did after May 3rd with the other operators. This question is more fully discussed hereinafter.

1-b(1)

This case does not involve the merits of the respective demands which each party required before signing a contract. It is sufficient to say that no agreement was reached. Respondents find no inference in the finding:

> "That the employers-respondents notified the various claimants-appellees, through their duly appointed agents, of the cancellation of the working agreement of the year 1939, and of the necessity of entering into a new working agreement for the canning season of 1940"

that the Commission is placing any onus or blame on either petitioners or respondents. Petitioners' argument seems to be an attempt to introduce a new element in the case which has no place in it. The

Commission does not have to decide which party, if any, was at fault in failing to give in to the other. The Commission can only determine whether or not there was a dispute in active progress during the respective eight-week periods. [253]

1-b-(2)

The fact that Alaska Salmon Company set an earlier deadline by three days than the other two operators is immaterial. It is simply a question of whether their employees were also involved in a dispute, and not a question of when their negotiations terminated. Petitioners say Alaska Salmon Company did not find it necessary to reach an agreement for the 1940 season. An agreement as to the terms of one's employment is always "necessary". Agreements certainly have been necessary and still are necessary between the cannery workers and employers. The failure of the operations was wholly because of the necessity of an agreement before the operations could commence.

Section 2 of Paragraph XII

Respondents deny that the conclusions of law and decision are not supported by the findings of fact.

2-a-(1)

In preparing its findings of fact, the Commission did not actually use the words "labor dispute" but recites the facts regarding the cancellation of the 1939 "working agreement", the negotiations for and failure to arrive at a new agreement. The contention of the petitioners under this sub-section is that these facts do not support a conclusion that

a "labor dispute" existed between the parties. A labor dispute is defined as a controversy over terms and conditions of employment. (see Paragraph 1, Page 5, Respondent's Brief on Appeal to Commission.)

The Commission made the following finding, to-wit:

> "That following the notification by the employers-respondents to the claimants-appellees that the employers-respondents elected to cancel the working contract entered into between said parties for the canning season of 1939, and that the same would not be in force for the canning season of 1940, and the necessity of entering into another agreement, negotiations for such an agreement were entered into between said parties and were in active progress at the opening of the canning season as set forth in said Regulation No. 10. That there is evidence before this Commission that no agreement was ever entered into between the interested parties prior to the opening of the season or thereafter."

In effect, the petitioners contend that although the finding refers to negotiations, there is no reference therein as to the subject of the negotiations. The portions of the finding underlined above can support no other conclusion and certainly support the conclusion that "there was an active labor dispute existing between said parties." (See second

paragraph of Conclusion and Decision of Commission.) [254]

2-a-(2)

The argument in the petition under the above numbered part of Paragraph XII, attacks the conclusion that there was an "active labor dispute existing between the parties at the opening of the season."

Petitioners contend that since the Bristol Bay negotiations ended on May 3rd and the season, as set by Regulation 10, opened on May 5th, the labor dispute was not "active at the "opening of the canning season". Such a contention presupposes that you cannot have a labor dispute after the negotiations cease. It is admitted by all the parties that the negotiations terminated as to the respective places of work as follows:

Karluk	April 10th
Chignik	April 12th
Bristol Bay	May 3rd

The seasons opened as follows:

Karluk	April 5th
Chignik	April 1st
Bristol Bay	May 5th

The negotiations, therefore, continued after the opening of the season for Karluk and Chignik, but ended before the opening of the season as to Bristol Bay. The question involved in this case is whether the dispute continued in active progress during the eight weeks following the two-week waiting period after the opening of the respective seasons and not

whether the negotiations continued during these periods. It is immaterial when the negotiations ended if the dispute continued. Respondents submit that a dispute can and did exist in active progress throughout the whole ten weeks after the season opened for each place of work.

Petitioners attempt to attach some importance to the fact that the negotiations terminated two days before the Bristol Bay season opened, but it makes no difference whether they terminated before or after May 5th if the dispute continued throughout the eight weeks in May, June and July, as was found by the Commission. This question is thoroughly discussed in the remainder of this answer and in respondent's affirmative brief on the subject.

2-b

In the petition under this numbered heading petitioners take exception to the conclusion that "the dispute continued", claiming the conclusion is not supported by the Findings. [255]

The Commission made "Findings of Fact and Reasons for Decision" which were followed by a "Conclusion and Decision." In its Findings the Commission sets forth the following uncontroverted facts:

(1) A new agreement had to be reached for 1940;

(2) Negotiations were held in an attempt to reach an agreement;

(3) No working agreement was made;

(4) As a result thereof, no work was performed in the 1940 season.

From these facts the Commission concluded there was "an active labor dispute existing between said parties at the opening of the season; that said dispute continued", and that the law was as set forth in the Conclusion and Decision, and, therefore, the petitioners were entitled to benefits only after the eight weeks of disqualification because of the existence of an active labor dispute during those eight weeks.

Respondents submit that it was not necessary for the Commission to make a finding that the dispute continued, as this is a matter of conclusion determinable from the facts above enumerated. A finding is something to be found in the evidence, and a decision is something which must be concluded from the evidence. Therefore, the decision that the dispute continued was properly in the decision as it is a matter of law and it would be improperly placed if put in the Findings.

Petitioners also object to the lack of a finding to support the conclusion that a labor dispute existed. The same argument is asserted by respondents to this objection as was asserted in the last paragraph hereof. The existence of a labor dispute is a matter of law to be determined from the Findings set forth on the preceding page.

Petitioners also under this numbered heading raise the false assumption that no labor dispute can exist after the negotiations terminate. This as-

sumption is repeatedly denied herein and will be treated at length in a brief submitted by respondents representing the affirmative argument which shows that a dispute can continue after the negotiations for a new contract have terminated between an employer and employees.

3.

Respondents deny that the Conclusions of Law and Decision are not supported by the evidence.

3-a.

Petitioners under this numbered heading contend no labor dispute can exist without picketing, a strike or the existence of an employer- [256] employee relationship. Respondents contend that a strike and picketing are not necessary elements to a dispute nor is it necessary that there be a presently existing employer-employee relationship.

As hereinabove stated, a labor dispute is defined as a controversy over terms and conditions of employment. There is abundant uncontroverted evidence to show the existence of the controversy as to the terms and conditions demanded by each side.

Petitioners contend that there must be an interruption in the work as distinguished from a failure to commence the work at the opening of a season. They contend that an interruption constitutes a strike, but that a failure to work does not constitute a strike. This seems to be splitting hairs uselessly, for either an interruption of work or a failure to commence work is simply evidence of a dis-

pute and sufficient evidence for the Commission to find that a labor dispute existed.

The courts have repeatedly held in labor cases under the jurisdiction of the National Labor Relations Act that men working in seasonal employment, regularly represented by the same bargaining agent and regularly employed for such seasonal work, are considered employees for the purposes of the Act. Even though petitioners were not under the control or on the payroll of the employers, and even though an employer-employee relationship may have existed, such a relationship is not necessary to create a labor dispute under such circumstances. The Commission is entitled to deny benefits to one who refuses to work when work is offered the same as it is entitled to refuse benefits to a man who quits his job. For this purpose a man drawing such benefits must report weekly to an employment office set up under the Social Security Act, and certify that he has been unable to gain employment.

Petitioners also claim that Alaska Salmon Company would not have operated in 1940 even if an agreement had been reached. There is nothing to support this conclusion. It is true that Alaska Salmon Company withdrew from the negotiations on April 30th, but the failure to reach an agreement sooner was one of the principal causes for abandoning its operations. Mr. Roden asked if there were any reasons which compelled the Alaska Salmon Company not to operate irrespective of any difficulties in the negotiations, and the representative

of the Alaska Salmon Company said he could not go that far, but was willing to stipulate that there were factors or causes in addition to a labor dispute. (See Transcript, P. 318.) [257]

Mr. Roden asked Mr. Oliver if the company was financially embarrassed so it could not operate, and Mr. Oliver denied that this was the case. (See Transcript, P. 319.)

Therefore, it can only be said, and it must be said, that the labor dispute contributed materially to the failure of the Alaska Salmon Company to operate in 1940 and caused them to withdraw from the negotiations and abandon entirely the operations on April 30th, although the other companies were willing to negotiate three days longer on Bristol Bay operations. Alaska Salmon Company operates only in Bristol Bay.

3-b.

Under this numbered heading petitioners again raise the assumption that a labor dispute cannot be active unless negotiations are being held for the purpose of reaching a contract. As stated before, this matter will be treated in Respondents' affirmative brief. Respondents contend that a dispute continues in active progress as long as the differences between the parties continue to exist regardless of whether or not they do anything to solve those differences. In this case it was useless to do anything after the deadlines had been reached. These deadlines were the dates set by the operators

after which they could not load the ships, sail for Alaska and be here in time to catch the fish. After the deadlines, the differences between the parties continued to exist, but there was no use in trying to solve them. There is nothing to indicate that either side ever would or could accept the other's offer, either for the 1940 season or for the 1941 season. The differences continue to exist. Neither side has given in to the other, and there is no indication that any agreement will be reached in time to can fish in the 1941 season. The stoppage of work was complete throughout the whole season for each place of operation as the direct result of the dispute and the failure of the parties to reconcile their differences.

As will be shown in Respondents' Affirmative brief, it is a question of what the Legislature intended by the words "in active progress." Petitioners claim that in order for the dispute to be in active progress, there must have been something actively going on, such as picketing, negotiations or "an interruption of operations" as distinguished from a failure to begin operations. They say there must have been a way to end the dispute and an employer-employee relationship during the weeks of disqualification. Respondents contend there [258] need only be a disagreement on terms of employment affecting the operations throughout those weeks, preventing the employer-employee relationship, and preventing the operations from being prosecuted. As will be shown in Respondents' affirmative brief, the latter was the intention of the

Legislature, which would not want unemployment compensation funds to be paid during any period that the operations were affected and production stopped because of a labor dispute.

3-c.

The evidence is conclusive that no canning of fish was done by the operators because of this dispute, the differences were never solved and the dispute continued as a matter of law which must be concluded from the evidence.

3-d.

Petitioners attempt to render the decision of the Commission void because it does not specifically find and decide that the unemployment of petitioners was "due" to a labor dispute in active progress at the premises, and not "due" to some other cause. The Commission had a Referee take the testimony in this case and make a decision. The Referee found the unemploymen "due" to such a labor dispute, and found each and every element for disqualification to have existed except that he was of the opinion that the labor dispute did not continue "in active progress" through the eight weeks for which they had previously been disqualified by the Commission. The hearing before the Commission was to determine only one point, namely: Did the labor dispute continue in active progress throughout those eight weeks? The Commission decided it did, and there was nothing more necessary to decide or find. Petitioners had taken exceptions to the Findings of the Referee or his

decision. They were accepted by petitioners and concurred in by respondents, except insofar as respondents excepted thereto. No exception was taken to this finding of the Referee, and so no redetermination needed to be made on this point.

4.

Respondents deny that the Findings of Fact made by the Commission compel a decision contrary to the one rendered. Petitioners try again to inject a new and foreign element *in the case which has no* place in it. It is immaterial whether the operators insisted on a new contract or the respondents so insisted. The result was a dispute. There is nothing in the law which makes it necessary for the Commission to pay [259] benefits because somebody cancelled a working agreement or insisted on a new one.

5.

Respondents deny that the evidence and a proper consideration of the case requires findings of fact on matters which the Commission ignored.

In this connection, respondents wish to again point out that the Commission had only one question before it, namely: Did the labor dispute which the Referee found to exist at the beginning of the canning season continue throughout the eight weeks involved, or did it terminate with the termination of the negotiations?

6.

Respondents deny that the Commission's decision is contrary to law.

Respondents admit that the Act is to be liberally construed, but maintain that the liberal construction can only be for the purpose of accomplishing what was intended by the Legislature.

> "Laws enacted in the interest of the public welfare, for the protection of human life or the preservation of health—or providing remedies against either public or private wrongs, should be liberally construed with a view to promote the object in the mind of the Legislature." 59 C. J. 1105, Sec. 656.

Respondents thoroughly cover the subject of the intention of the Legislature in their brief in affirmative support of this answer. There respondents contend it was not the intention of the Legislature that workers should be paid benefits when their unemployment was caused by a disagreement over terms and conditions of employment, regardless of whether there was a strike or a refusal to accept their regular seasonal employment.

Wherefore, respondents pray that the petition of petitioners for review of the Commission's decision in the above entitled matter be dismissed, said decision affirmed and such further relief as is meet in the premises.

Dated at Juneau, Alaska, February 6th, 1941.

GROVER C. WINN,
Attorney for Unemployment Compensation Commission of the Terr. of Alaska: Noble Dick, R. E. Hardcastle and R. S. Bragaw, as members constituting said Commission.

FAULKNER & BANFIELD,
PILLSBERY, MADISON & SUTRO,
Attorneys for Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Co., corporations (Respondents).

[Endorsed]: Filed Feb. 6, 1941. [260]

[Title of District Court and Cause.]

REQUEST TO SET DEFINITE TIME FOR HEARING OR TO SUBMIT BRIEFS.

Comes now the above named defendants and respondents and respectfully requests that the Court set a time definite for a hearing in the above entitled matter or a time definite within which to submit briefs.

Dated this 6th day of February, 1941.

GROVER C. WINN,
Attorney for Unemployment Compensation Commission of the Territory of Alaska: Noble Dick, R. E. Hardcastle and R. S. Bragaw, as Members constituting said commission.

FAULKNER & BANFIELD,
Attorneys for Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company, corporations. (Respondents)

[Endorsed]: Filed February 6, 1941. [261]

[Title of District Court and Cause.]

STIPULATION SUBMITTING CAUSE ON BRIEFS

It is hereby stipulated by and between respective counsel that the above entitled cause shall be submitted on briefs only and that there shall be no oral argument before the Court; that petitioners shall have until the 1st day of May, 1941 to file their opening brief; and that defendants and respondents shall have until the 25th day of May, 1941 within which to file their brief; and that petitioners shall have until the 20th day of June, 1941 within which to file their closing brief; after which and whereupon the matter shall be submitted to the Court for decision.

Dated: April 2nd, 1941.

ANDERSEN & RESNER,
Attorneys for Petitioners.
GROVER C. WINN,
FAULKNER & BANFIELD,
Attorneys for Respondents.
By N. C. BANFIELD.

It Is So Ordered
GEO. F. ALEXANDER,
Judge of the District Court.

[Endorsed]: Filed April 3, 1941. [262]

[Title of District Court and Cause.]

OPINION

This cause is here on a petition for review, filed by Frank L. Aragon, on behalf of himself and *other* similarly situated, hereinafter called the "Claimants," as petitioners, against the Alaska Unemployment Compensation Commission, (Hereinafter called "the Commission"); the members of said Commission and the employers involved; and concerns the right of the Claimants to unemployment compensation benefits under the Alaska Unemployment Compensation Act (hereinafter called "the Act"), Chap. 4, Extraordinary Session Laws of 1937, as amended by Chaps. 1 and 51, S. L. 1939, and particularly the question of whether Sec. 5 (d) Chap. 4 Extraordinary Session Laws of Alaska, 1937, as amended by Sec. 5 (d) Chap. 1, S. L. Alaska, 1939 disqualifies the Claimants from receiving benefits

thereunder, it having been decided by the Commission that their unemployment was "due to a labor dispute which was in active progress at the factory, establishment or other premises at which he is or was last employed."

The pertinent parts of Section 5 of Chap. 4 as amended, are here quoted:

> "Section 5. Disqualification for Benefits. An individual shall be disqualified for benefits:
>
> Section 5 (d). For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided that such disqualification shall not exceed the eight weeks immediately following the beginning of such dispute; and provided further, that this subsection shall not apply if it is shown to the satisfaction of the Commission that: [263]
>
> 1. He is not participating in or directly interested in the labor dispute which caused his unemployment; and
>
> 2. He does not belong to a grade or class of workers out of which immediately before the commencement of the dispute there were members employed at the premises at which the dispute occurs, any of whom are participating in or directly interested in the dispute;"

The Claimants here contend they are entitled to be paid full benefits under the Act for their un-

employment during the 1940 Alaska salmon season, or, at least, that the Referee's decision should be restored and given full effect.

Their claims were first considered by an Examiner of the Commission, who denied them benefits, except after the first eight weeks following the opening of the season at the canneries in question, under the provisions of Sec. 5 (d) of the Alaska Unemployment Compensation Act, on the ground that "their unemployment was due to a 'labor dispute' in active progress at the establishment at which they were last employed." Thereafter, a Referee was appointed to take testimony and report his findings and conclusions to the Commission, who denied the claims as to Karluk and Chignik, but upheld them as to Bristol Bay. The matter was then considered by the Commission itself, which overruled the Referee as to Bristol Bay and sustained the Examiner, denying all benefits to the Claimants except after the first eight weeks following the opening of the season at the canneries in question.

Review of the Commission's decision is now sought by the Claimants in this Court, under authority of Section 6 (i) Chap. 4, Laws of Alaska, 1937, which provides:

> "(i) Court Review. Within thirty days after the decision of the Commission becomes final any party aggrieved thereby may secure judicial review thereof by commencing an action in the United States District Court against the Commission for the review of such deci-

sion, in which action any other party to the proceedings before the Commission shall be made a defendant.

* * * In any judicial proceeding under this section the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law."

It will be noted that Section 6 (i) provides that:

"* * * In any judicial proceeding under this section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law."

Furthermore, if (Petitioners) Claimants were not satisfied with the reasons given by the Commission for its decision in the notification of its decision given them, the Act provides they may appeal [264] therefrom within a specified time. Having failed to do so they cannot now complain on that score. (See Secs. 6 (c) and 6 (e) of the Act.)

There is no claim of fraud in this case, and hence the only questions for decision by this Court are whether the findings of fact made by the Commission are supported by evidence, and whether the conclusions thus reached are correct in law.

Before it passed upon the claims of the Claimants herein the Commission referred this matter

to a Referee who, after due notice to all interested parties, took voluminous and exhaustive testimony, which has been certified to this court and is now before us for examination.

From this record it appears that the Claimants (Petitioners herein) are all members of the Alaska Cannery Workers Union, Local No. 5 of San Francisco, a local union of the United Cannery Packing and Allied Workers of America, hereinafter designated as the "Union," said union being affiliated with the Maritime Federation of the Pacific. All the Claimants were employed during the 1939 canning season by the Alaska Packers Association at Chignik and Karluk (in central Alaska) and by the Red Salmon Canning Company, the Alaska Salmon Company, and the Alaska Packers Association in Bristol Bay. These concerns will hereinafter be designated as "the Employers." All of the Claimants reside in the San Francisco Bay region, and the Employers all operate salmon canneries in Alaska but have headquarters in, and operate out of, San Francisco.

Both parties appeared before the Referee and submitted evidence in support of their contentions. The Employers maintained that the unemployment of Claimants was due to a "labor dispute" which was "in active progress at the * * * premises at which he (the Claimants) is or was last employed." The Claimants took the opposite stand.

The Referee found the Alaska salmon fishing and canning industry to be a seasonal one, extending approximately from April into September of

each year; that the Commission had promulgated regularions wherein, for the purpose of the Act, the opening and closing days of the salmon season for various places in Alaska are fixed; at Karluk from April 5 to September 5; at Chignik from April 1 to Sept. 10; and at Bristol Bay from May 5 to Aug. 5 (Benefit Regulation No. 10).

From the inception of the industry in Alaska the salmon fleets carrying supplies, fishermen and cannery and other workers, have sailed [265] from San Francisco for the annual season to Karluk, Chignik and Bristol Bay. The Employers for many years past have operated under agreement with the Alaska Fishermens Union, and in more recent years have worked under agreement with other unions. The Employers and the Alaska Cannery Workers Union, Local No. 5, representing Claimants herein, entered into their first agreement with these employers in 1936, and continued to operate in each succeeding season under such agreements until and during the 1939 season. Their 1939 agreement provided that either party might terminate it at the close of the season, or before the following season, and that the parties would then proceed to negotiate a new agreement. The 1939 agreement was terminated in accordance with this provision in November of 1939, and negotiations for the 1940 season contract commenced in March, 1940. These negotiations continued at San Francisco until about April 1st, with propositions of settlement being made by first one and then the other

of the parties in interest. At these negotiations the Claimants were represented by officials of their union and the Employers by the Alaska Salmon Industry, Inc., a corporation organized for the purpose of handling labor problems and associated matters on behalf of its members, all of whom are salmon canners.

Being still unable to arrive at any agreement, the Union forwarded a letter to the Employers about the first of April, withdrawing its last proposed 1940 agreement, and stating that all further negotiations were being transferred to Seattle, where its representatives would meet, and did meet, with the Employers' agents. This move was welcomed by the Employers, who hoped to negotiate a coastwise agreement which would govern all Alaska operations and thereby put the San Francisco operators and employees on a parity with the Seattle and Portland operators and employees.

Thereafter, negotiations were resumed between the parties at Seattle. There negotiations with the San Francisco unions being about to fail, last minute attempts were made by both parties to come to an understanding, the Union proposing a renewal of their "1939 San Francisco agreement," while the Employers proposed the acceptance by the Union of the so-called "1939 Seattle agreement." Eventually a new agreement was negotiated at Seattle between the Seattle and Portland operators and unions, but this occurred later and did not include the San Francisco unions and operators. [266]

Near the end of the negotiations at Seattle, the time growing near when an agreement must be made in order to make it possible for the operators to make the necessary preparations for operating their canneries in those districts, the San Francisco Employers notified the Union (Claimants) that if no binding contract was concluded by April 10th, regarding Karluk; or by April 12 regarding Chignik; or by May 3rd regarding Bristol Bay, no operations could be undertaken at these plants during the 1940 season. No agreement was reached with reference to any of the plants referred to within the zero hour fixed by the Employers, with the result that none of the canneries were operated in any of the districts above specified during the 1940 season and the Claimants thus lost their employment for that season.

The Claimants contend that the decision of the Commission should be reversed, because:

1. Certain findings of facts made by the Commission are not supported by the evidence, viz:

The Commission found as a fact that "negotiations for a 1940 agreement were entered into between the parties (Employers and Union) and were in active progress at the opening of the canning season, as set forth in said Regulation No. 10."

2. The conclusions of law and decision are not supported by the findings of fact, viz:

The Commission concluded that "There was an 'active labor dispute' existing between the parties at the opening of the season.

3. The conclusions of law and decision are not supported by the evidence, viz:

The conclusion that there was a 'labor dispute' is not supported by the evidence.

4. The findings of fact made by the Commission compelled a decision contrary to the one rendered; and

5. The evidence and a proper consideration of the case requires findings of facts on matters which the Commission ignored.

All of these contentions involve, in their final analysis, the interpretation of Sec. 5 (d) (as amended) of our Unemployment Compensation Act; and the determination of the larger questions of (1) What is a "labor dispute," and (2) whether such labor dispute was "in active progress" [267] at the factory, establishment or other premises where he is or was last employed; and it is to these larger questions that we shall address our principal attention.

Unfortunately the words "labor dispute" on which this controversy hinges, are not defined in the Alaska Unemployment Compensation Act; and we must therefore endeavor to determine what the legislature meant when those words were used. The legislature being supposed to have used such words in their common and accepted meaning, it remains for us to determine what that meaning is.

"Dispute" is defined in Webster's New International Dictionary as: "To contend in argument; to argue something maintained by another; to de-

bate; often to argue irritably; wrangle; to make a subject of disputation; to argue pro and con; to debate; to oppose by argument or assertion; to attempt to overthrow; controvert; to call in question; to deny the truth or validity of."

In Federal legislation the term "labor dispute" has been defined in two acts of the Congress. In the Norris-LaGuardia Act (U.S.C.A. Title 29, sub-sec. c of Sec. 113) the term is defined as follows:

"The term 'labor dispute' includes any controversy concerning terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

In the National Labor Relations Act (U.S.C.A. Title 29, sub-sec. 9 of Sec. 152) the term is defined thus:

"The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representations of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

Our own unemployment compensation act was enacted in pursuance of the policy of social legislation enacted by the Congress of the United States, and, as is well known, is operated in conformity

with Federal legislation and, to some extent, under Federal restrictions. We are not bound by the definition of a labor dispute contained in the Federal statutes, but these definitions are at least persuasive of what [268] should be the definition of such a dispute, and are not out of line with the general and common acceptance of the meaning of the term; and, as said by Judge Fox in Miners in General Group vs. Hix, 17 S. E. 2d. (W. Va.) 810:

> "Until a better definition is found, or there is some substantial reason for a finding that our legislature had in mind a different meaning to be attached thereto, there would seem to be no impropriety in our accepting these existing definitions (In Norris-LaGuardia and Wagner Acts) in the determination of what was then meant."

The term "labor dispute" has also been defined by many of our courts of last resort, but we regard a review of these decisions as unnecessary, since they can be readily found in "Words and Phrases" (Perm. Ed.) under that title.

Very recent opinions of the courts of last resort in Ala., Ky. and Tenn. uniformly hold, under statutes similar in all material respects to our own, that:

> Unemployment caused by the expiration of a contract of *of* employment, and by the inability of the parties to agree on the terms of a new contract, is "due to a labor dispute" within the meaning of their statutes; and persons so unemployed are ineligible for benefits.

Dept. of Ind. Rel. vs. Pesnell, 199 So. (Ala.) 720-724

Barnes vs. Hall, 146 S. W. 2nd (Ky.) 929

Block Coal & Coke Co. vs. United Mine Workers of A. 148 S. W. 2nd (Tenn.) 364.

There is, therefore, no question but what the negotiations between the parties, involving as they did, wages, hours and terms of employment, did constitute a "labor dispute" as that term is used in our statute.

We next turn to the determination of whether or not such labor dispute was "in active progress" at the factory, establishment or other premises at which he is or was last employed.

Concerning this The Commission found that "There was an active labor dispute existing between said parties at the opening of the season at all of the canneries in question, that said labor dispute continued," and that the Claimants were entitled to receive, if otherwise eligible, unemployment insurance as follows: "At Karluk Cannery eight (8) weeks after April 5; At Chignik Cannery eight (8) weeks after April 1; and at the Bristol Bay Cannery eight (8) weeks after May 5; said eight weeks disqualifying period being in addition to the two weeks regular waiting period, and if otherwise eligible."

It is admitted by the record that the dates of operation of the canneries in the districts involved in his controversy as fixed [269] by Regulation No. 10 are as follows:

At Chignik, from April 1st to September 10th:

At Karluk from April 3 to September 25, and

At Bristol Bay from May 5 to Aug. 25;

and that the negotiations were not called off as to Chignik until April 12, as to Karluk until April 10, and as to Bristol Bay until May 3d.

It thus appears by the record and the admissions of all the parties hereto, that such "labor dispute" was "in active progress" at Chignik until twelve days after the season began; at Karluk until April 10th—five days after the opening of the season there; and at Bristol Bay at least until May 3d, with the season officially opening there on May 5.

It also appears from the testimony taken before the Referee, (and is a fact so well known to both the Employers and Claimants, and to their representatives, and to the public generally, that the Court may well take judicial notice thereof), that even after an agreement has been reached, preliminary to the operation of such canneries, it is necessary for the Employers to purchase, pack, assemble and load onto their boats, food, medical and all other supplies for an entire season, and to transport such supplies and their working crews (the Claimants) from San Francisco to their canneries, a distance of from two to three thousand miles, and requiring ten to fifteen days to make the trip alone, without calculating the time nec-

essary for preparation for such trip and the time for unloading their crews and supplies at their destinations, putting their canneries into shape for operation and preparing generally for the season's work.

It should also be borne in mind that the work at these canneries is seasonal work of comparatively short duration, and that in order to operate said canneries it was necessary for the Employers to reach an agreement with the Claimants within a time sufficient to permit the necessary preparations for the season's work and such operations on a reasonable basis. This also was well known to both the Employers and the Claimants.

That there was a constantly recurring and open controversy between the Employers and the Claimants as to wages, etc. and that this "labor dispute" was the cause of the failure of the canneries to operate and the [270] consequent unemployment of the Claimants, is thoroughly established by the evidence taken before the Referee.

It is immaterial to this discussion and to the findings in this case as to who was responsible for the failure to agree upon a 1940 contract between the parties that caused Claimants' unemployment. The reason for the failure to operate the canneries and the consequent unemployment of the Claimants was because the parties could not agree upon the terms of a contract for the 1940 season. It is not important as to why they failed to agree or whose fault is was, or whether one party or the other was to blame. The only thing

of importance is the ultimate fact that they did not agree and that their failure to agree caused the unemployment of the Claimants, which is the basis of their claim.

Our statute makes no attempt to fix the responsibility for such stoppage of work, nor can we. The statute merely provides that no benefits may be paid thereunder where the "Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed."

Courts cannot legislate into statutes by interpretation, a meaning which the legislature itself was unwilling to sponsor or has purposely repudiated. Here the record shows that the reason for adding the proviso to Sec. 5(d) "provided that such disqualification shall not exceed the eight weeks immediately following the beginning of such dispute," was to give the beneficiaries of the statute eight weeks in which to settle their "labor dispute," and to deny them the benefits of unemployment compensation during such period. As was said by Justice Carter, in speaking for the Court in Deshler Broom Factory vs. Kinney (2 N. W. (2d) 332), in interpreting the Nebraska statute—which is substantially identical with our own:

> "The unemployment compensation law does not purport to grant benefits to workmen who leave their work voluntarily; and neither does

it intend for an employee to benefit from the act while his bargaining agents are attempting to adjust their differences with the employer, since voluntary idleness under such conditions is not 'unemployment'."

It thus appears that there was an "active labor dispute" existing between the parties hereto at the opening of the season. That no agreement was made for the 1940 season, as a result of which the canneries in question did not operate and the Claimants were thereby [271] deprived of employment.

The Claimants also contend that the Alaska Salmon Company abandoned its 1940 Bristol Bay operations on April 30, 1940, and would not have operated during 1940, irrespective of whether there had or had not been an agreement with the Union. This contention was considered by the Referee and found without merit, and we concur in his finding.

They also contend that there was no Employer-Employee relationship existing between the parties at the beginning of the 1940 season. It is, however, agreed that such relationship had existed between the parties in the previous seasons, which would bring them within the provision of our statute denying compensation to "those whose total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed."

"An employer-employee relationship is not necessary for the imposition of the disquali-

fication, since the statute is broad enough to cover not only one presently in an employer-employee relationship, but also one who has last been in such relationship, although that relationship may have expired."

(Block Coal & Coke Co. vs. United Mine Workers of America; Tennessee Supreme Court, March 8, 1941.)

(Dept. of Industrial Relations vs. Pesnell, 199 S. p. 720-726.)

(Barnes et al. vs. Hall, 146 S. W. 2d (Ky.) 929.)

Other Courts of last resort have so construed similar statutes.

They further contend that an "active labor dispute" means a strike and picket line, an operation which is interrupted by such dispute, but such is not the law, and no authorities are cited in support of this proposition, although many authorities could be cited to the contrary.

It is also urged that unemployment laws are remedial in nature, and as such are to be liberally construed. With this we agree, but in this connection we call attention to the declaration of the Territorial public policy set forth in the preamble to the Act itself, in these words:

"Declaration of Territorial Public Policy. As a guide to the interpretation and application of this act the public policy of this Territory is declared to be as follows:

Economic insecurity due to unemployment is

> a serious menace to the health, morals and welfare of the people of this Territory. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burdens which now so often fall with crushing force upon the employed worker and his family * * *. The Legislature therefore declares that in its considered judgment the public good, and the general welfare of the citizens of this Territory require the enactment of this measure under the police power of the Territory for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through No Fault of Their Own."

[272]

The purpose of our Unemployment Compensation Act as thus expressed was "to provide economic security for the benefit of persons unemployed through no fault of their own And We think the statute should be construed in keeping with its declared policy, and while yielding to the view that the statute should be liberally construed, we think that it should be liberally construed in consonance with its expressed purpose.

Other minor questions are raised by the claimants in their petition for review, but most of them are fully answered in the discussion of the larger questions involved, and such as remain are not considered of sufficient importance to merit discussion.

The conclusions herein announced find support in:

Latham vs. State Unemployment Comp. Comm. 117 P. 2d (Ore) 97,
Stearns Coal & Lumber Co. vs. U. S. Com. et al. 3 C.C.H. (Ky.) 20511,
Barnes vs. Hall—146 SW 2d. (Ky.) 929,
Miners in General Group vs. Hix 17 SE 2d (W. Va.) 810,
Dept. of Indus. Relations vs. Pesnell, 199 S. (Ala.) 720,
Ex Parte Pesnell—199 S. (Ala.) 726,
Block Coal & Coke Co. vs. United Mine Workers, 148 SW 2d (Tenn.) 364,
Deshler Broom Factory vs. Kinney 2 NW 2d. (Neb.) 332.

A review of these cases might be interesting, but this opinion has already reached unexpected length. We therefore only add that we are aware of no courts of last resort (nor have any such cases been cited) which have reached a conclusion at variance with the views herein expressed, and our information and research both indicate that a large majority of the State Commissions have reached the same conclusions with respect to similar unemployment for which compensation was sought under statutes similar, or differing only slightly, from our own.

The Finding of the Unemployment Commission are therefore affirmed.

Findings and Judgment may be prepared in accordance herewith.

Dated at Juneau, Alaska, April 30, 1942.

GEO. F. ALEXANDER
Judge.

[Endorsed]: Filed May 2, 1942. [273]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the court on a petition of the petitioners above named, for review of a decision of the Unemployment Compensation Commission of the Territory of Alaska and the answer of the above named respondents, to-wit: The Unemployment Compensation Commission of Alaska, the members thereof, the Alaska Packers Association, Alaska Salmon Company and the Red Salmon Canning Company, corporations; and the matter having been by stipulation of all the parties hereto, submitted on briefs of petitioners and respondents, and the court having examined the whole record and considered the briefs and the law of the Territory of Alaska, and being fully advised in the premises; and having made and filed herein on May 2d, 1942, its written opinion, and it appearing that the claims of petitioners were first considered by an Examiner of the Commission, as prescribed by law, and denied, for eight weeks after the two-week waiting period following the opening of the season, as defined by the regulations of the Unemployment

Compensation Commission, at the canneries in question hereinafter named. That thereafter a Referee, to-wit: Henry Roden, was appointed to take testimony and report his findings and conclusions to the Commission, and the Referee denied the claims in part and upheld them in part. The matter was then considered by the Commission itself, which overruled the decision of the Referee in part and sustained it in part; and from the ruling and decision of the Commission, petitioners have sought a review of the decision of the Unemployment Compensation Commission in the above entitled court. That the court has jurisdiction over the parties and the subject matter, and now makes the following— [274]

FINDINGS OF FACT

1. That petitioners are members of Alaska Cannery Workers Union Local No. 5, an unincorporated association and labor union with collective bargaining powers, and the Union acted throughout all the proceedings herein on behalf of itself and all its members.

2. That the respondents, Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company, are corporations with headquarters in San Francisco, operating canneries in several points in Alaska, to-wit: Chignik, Karluk and various places in Bristol Bay, and the petitioners are and were in 1939, employees of these companies in their fishing and canning operatons in Alaska. That the respondent companes are engaged in catch-

ing, canning and marketing salmon in the waters of Alaska and at the places hereinabove mentioned and mentioned in the proceedings, and that this work is seasonal in nature and the time of each year during which fishing can be carried on is prescribed by regulations of the Department of the Interior pursuant to the laws of Congress, the actual fishing season being prescribed by law and regulation, and the entire operations, including the fishing season, covering only a few months of each year. That the fishing and canning season, including the period of preparation therefor, for the purposes of the unemployment compensation law of the Territory, at various points in Alaska, is under the law fixed by regulations of the Commission, and that these regulations prescribe the opening and closing days of the salmon season at Karluk, Alaska, to be from April 5th to September 5th; at Chignik from April 1st to September 10th; and at Bristol Bay from May 5th to August 5th, and that the employees, including petitioners, are sent from San Francisco, together with supplies, each year, and returned to San Francisco at the end of the season, and the respondent companies, the employers, for many years past operated each and every season under an agreement with the Alaska Fishermen's Union, and in more recent years and including the seasons from 1936 to 1939, inclusive, with the Alaska Cannery Workers Union Local No. 5, which represents the claimants herein.

3. That before the employees sailed from San Francisco each year for the canneries in Alaska and

the fishing grounds, they made a working agreement through the unions with the companies, covering wages, hours, working conditions and all other matters incident to the employment and usually covered by such working agreements. [275]

4. That the last working agreement actually entered into between the companies and the petitioners and employees and the Union acting for them, covered the season 1939, and it was terminated in November 1939 and no agreement was ever made for the season of 1940 for any of the companies at any of their canneries in Alaska, and no canneries operated during the 1940 season.

5. That negotiations were entered into before the dates of the opening of the season, as prescribed by the regulations of the Alaska Unemployment Compensation Commission, and there was a disagreement between petitioners and the Union and its members and the respondent companies. Demands were made by the Union and its members and by the claimants and petitioners; offers were made by the companies, the respondents, and counterdemands were made, all covering the respective canneries. These demands, offers and counterdemands were all with reference to the terms and conditions of employment, and especially with reference to the wage scales for the 1940 season, and there was a labor dispute between petitioners and claimants, the Union and its members, on the one side, and the respondent companies on the other side, and this labor dispute continued and was never settled but remained in progress as hereinafter set forth.

6. That in order to operate salmon canneries in Alaska, it is necessary for the operators, the companies, to make preparations sometime in advance to sign on its employees, prepare its ships, purchase and load supplies and sail to the canneries in Alaska in time to make all preparations there and be on the ground when the fishing season opens, as prescribed by law.

7. That after the labor dispute as hereinabove mentioned had continued for some time and no prospect of settlement was in sight, the employers notified the claimants, petitioners and the Union, that if no contract were concluded before April 10 for the Karluk operations, before April 12th for the Chignik operations and before May 3rd for the Bristol Bay operations, it would be impossible to operate and no operations could be undertaken at the canning plants at Chignik, Karluk and Bristol Bay, and the court finds that from the nature of these operations and the requisite nature of the preparations required, no such operations could be undertaken unless agreements were reached before those dates.

8. That no agreement was reached within the time set by the employ- [276] ment for the respective plants, and no agreement was reached within time for the opening of the fishing and canning season as prescribed by the regulations of the Department of Interior and as defined by the regulations of the Unemployment Compensation Commission of Alaska, and no operations could be carried on dur-

ing the 1940 season by the respondent companies at their canneries at Chignik, Karluk and various points in Bristol Bay.

9. That the labor dispute which was in progress long before the opening dates for fishing and canning as hereinabove set forth, existed and was in active progress at the Chignik, Karluk and Bristol Bay canneries during the entire season as defined by the Commission.

10. That the unemployment of claimants in the 1940 fishing and canning season, and the whole thereof, was due to a labor dispute existing between the employers, the respondent companies herein, and the claimants, and that this labor dispute was in active progress at the cannery at which they were respectively last employed, and there was an active labor dispute between the claimants and the respondent employers during the entire canning season as defined by the Commission at the respective canning plants at Chignik, Karluk and various points in Bristol Bay, Alaska.

11. That the conclusions of law and the decisions of the Alaska Unemployment Compensation Commission were amply supported by the findings and by the evidence, and the decision was proper and in accordance with the findings and evidence, and the findings were sufficient to sustain the decision of the Commission and no other findings were necessary to a determination of the question involved, and such findings and decision were made according to law.

12. That the evidence does not support the con-

tention of claimants that the Alaska Salmon Company, one of the respondents, would not have operated in 1940 regardless of the outcome of the labor dispute and regardless of whether or not there had been or had not been an agreement made with claimants.

13. That petitioners made no objections to the findings of the Commission and did not appeal to the Commission from its decision within the time and in the manner required by law, and that there was complete absence of fraud, and, therefore, the findings of the Commission are conclusive. [277]

Based on the foregoing Findings, the court makes the following:

CONCLUSIONS OF LAW

1. The Claimants were not unemployed "through no fault of their own," but were unemployed because they were unwilling to accept employment offered them. The claimants were unemployed due to a labor dispute which was during the entire fishing and canning season of 1940 as defined by the Commission in active progress at the factory, establishment or other premises at which they were last employed.

2. That an active labor dispute does not mean, under the statute, picket lines and strikes and interruption of work already begun, but may consist of a controversy without the existence of a strike. That while the Alaska Unemployment Compensation laws is of a remedial nature and to be liberally construed, it must be construed in keeping with the

declared purpose of the law, which is found in Chapter 4, Session Laws of Alaska, Extraordinary Session, 1937.

3. That the findings and decision of the Alaska Unemployment Compensation Commission, of which petitioners sought a review, are affirmed; and none of the claimants are entitled to the benefits claimed.

Judgment and Decree may be entered accordingly.

Done in open court this 8th day of August, 1942.

GEO. F. ALEXANDER
Judge.

[Endorsed]: Filed August 8, 1942. [278]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE

State of California,
City and County of San Francisco—ss.

Albert J. Brown, being first duly sworn, deposes and says: That he is, and at all of the times herein mentioned was, a resident of the State of California, over the age of eighteen years, and competent to be a witness in the above entitled matter; that on the 10th day of July, 1942, he served a copy of the findings of fact and conclusions of law in the above entitled matter upon the law firm of Messrs. Andersen & Resner, attorneys for the above named petitioners, by delivering to Herbert Resner, Esq., personally at his office at 544 Market Street, San

Francisco, California, a copy of said findings of fact and conclusions of law.

ALBERT J. BROWN

Subscribed and sworn to before me this 11th day of July, 1942.

(Seal) FRANK C. OWEN

Notary Public in and for the City and County of San Francisco, State of California. [279]

In the District Court for the Territory of Alaska, Division Number One, at Juneau

No. 4620-A

FRANK L. ARAGON, and other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and Alaska Cannery Workers Union Local No. 5, on behalf of Applicants,

Petitioners,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA; NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as members of and constituting said Commission, and ALASKA PACKERS ASSOCIATION, a corporation; ALASKA SALMON COMPANY, a corporation; and RED SALMON CANNING COMPANY, a corporation,

Defendants and Respondents.

DECREE

This matter having come on before the court to

be heard upon the petition of claimants hereinabove named, for a review of the decision of the Unemployment Compensation Commission of the Territory of Alaska, pursuant to the provisions of the Unemployment Compensation Act, Chapter 4, Session Laws of Alaska, Extraordinary Session 1937, as amended by Chapters 1 and 51, Session Laws of Alaska 1939, and the answer of respondents and defendants above named, and the matter having been by stipulation submitted on the briefs of the parties, and the court having examined the record and the briefs and the applicable law, and having rendered a written opinion on the 2nd day of May, 1942, and having made and filed herein its Findings of Fact and Conclusions of law,

It Is Hereby Ordered, Adjudged and Decreed that the findings and decision of the Alaska Unemployment Compensation Commission sought to be reviewed are hereby affirmed and approved, and claims of petitioners to benefits claimed by them under the provisions of the Alaska Unemployment Compensation law are hereby denied.

Done in Open Court this 8th day of August, 1942.

GEO. F. ALEXANDER,
Judge.

[Endorsed]: Filed August 8, 1942. [280]

[Title of District Court and Cause.]

PETITION FOR LEAVE TO APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Come now Frank L. Aragon and other individual applicants in the above entitled action, and the Alaska Cannery Workers Union, Local No. 5, on behalf of said Applicants, being petitioners and appellants in the above entitled action, and conceiving and believing themselves to be aggrieved by the judgment made and entered against them on August 8, 1942, do hereby petition the above entitled Court for leave to appeal from said judgment and the whole thereof to the United States Circuit Court of Appeals for the Ninth Circuit, and hereby file their assignment of errors asserted and relied upon by them upon said appeal; that an order be entered herein allowing said applicants and appellants to prosecute this appeal without the necessity of filing any cost and/or any supersedeas bond on appeal as provided by the Alaska Unemployment Compensation Law (Statutes of Alaska, Chapter 4, Extraordinary Session Laws of 1937, as amended by Chapters 1 and 51, Session Laws 1939, Section 6 (i); and that a citation may issue and be directed to respondents and each of them citing them to appear in the said United States Circuit Court of Appeals for the Ninth Circuit 40 days from the date of said citation; and that an order be made directing the Clerk of the above entitled Court to prepare the transcript of the record, proceedings and papers, and all of them, upon which

said judgment was made and entered, and duly authenticate the same and send the same [281] to the said United States Circuit Court of Appeals for the Ninth Circuit.

Dated at San Francisco, California, October 26, 1942.

ANDERSEN & RESNER,
GEORGE R. ANDERSEN,
HERBERT RESNER.

Copy received November 4, 1942.

H. L. FAULKNER,
Attorney for Alaska Packers Assn., Alaska Salmon Co. and Red Salmon Canning Company.

GROVER C. WINN,
Attorney for Alaska Unemployment Comp. Commission.

[Endorsed]: Filed November 4, 1942. [282]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Come now Frank L. Aragon and other individual applicants in the above entitled action, and the Alaska Cannery Workers Union, Local No. 5, on behalf of said Applicants, being petitioners and appellants in the above entitled action, and complaint of the judgment rendered and entered herein by the District Court for the Territory of Alaska, Division No. 1, at Juneau, on August 8, 1942, and

of the whole thereof, and aver that in the proceedings in said cause manifest error has occurred to the prejudice of these applicants and appellants and each of them of which they make the following:

ASSIGNMENTS OF ERROR

which they assert and intend to rely upon in the United States Circuit Court of Appeals for the Ninth Circuit upon their appeal to said Court.

I.

That Finding of Fact No. 5 made by the District Court is not supported by the evidence adduced before the Referee and the Commission in that no labor dispute, within the meaning in the Alaska Unemployment Compensation Law, existed between petitioners and claimants, the Commission and its members, on the one side, and the respondent companies on the other side; and that said alleged labor dispute did not continue and did not remain in active progress as stated by said finding. [283]

II.

That Finding of Fact No. 6 made by the District Court is irrelevant and immaterial in that it makes no difference whatsoever to this proceeding when respondent companies find it necessary to make preparation for the Alaska Salmon Packing season, but the only issue in this case is whether applicants and petitioners are entitled to benefits within the purvue of the Alaska Unemployment Compensation Law in view of the evidence adduced before the Referee and The Commission.

III.

That Finding of Fact No. 7 made by the District Court is not supported by the evidence in that said finding assumes that a labor dispute existed and continued whereas the fact is that no labor dispute existed or continued or was in active progress during the said 1940 Alaska Salmon packing season within the meaning of the Alaska Unemployment Compensation Law. Applicants and appellants take no exception to said finding insofar as it sets forth the dates given by respondent canneries as their deadlines for the execution of collective bargaining agreements. That insofar as said finding No. 7 finds that canning operations could not be undertaken unless agreements were reached before the dates set forth in said finding, said finding is improper in that said matter is immaterial and irrelevant to the rights of applicants and appellants to have unemployment benefits.

IV.

That with respect to Finding No. 8 made by the said District Court the only part of said finding that is proper is as follows: "That no agreement was reached." The balance of said finding is immaterial and irrelevant and is not a proper finding and has no relation whatsoever to the issue involved in this case, namely, the right of applicants and appellants to be awarded unemployment benefits for the 1940 season.

V.

That finding No. 9 made by the District Court is

not supported by the evidence in the following respects:

(1) No labor dispute existed within the meaning of the Alaska Unemployment Compensation Law.

(2) Admitting for the sake of argument that a labor dispute existed at one time, it did not exist and was not in active progress at the Chignik, Karluk and Bristol Bay canneries during the entire [284] season as defined by the Commission, but said labor dispute was in active progress at Chignik only from April 1, 1940, to April 12, 1940, and terminated on April 12, 1940, and was not in active progress at Chignik during the balance of the 1940 season; that said labor dispute was in active progress at Karluk only from April 5, 1940, to April 10, 1940, and terminated on April 10, 1942, and was not in active progress at Karluk during the balance of the 1940 season; that at the commencement of the season at Bristol Bay no labor dispute was in active progress, and no labor dispute existed with respect to the Bristol Bay operations at any time during the 1940 season.

VI.

That Finding of Fact No. 10 made by the District Court is not supported by the evidence adduced before the Referee and the Commission in that the unemployment of applicants and appellants during the 1940 season was not due to a labor dispute existing between applicants and appellants on the one hand and respondent companies on the other; and admitting for the sake of argument that a labor

dispute existed at one time, said labor dispute was not in active progress during the said 1940 season in the plants where applicants were respectively last employed, but said labor dispute, if any, terminated at Chignik on April 12, 1940 and terminated at Karluk on April 10, 1940, and was not in existence at all at Bristol Bay during the 1940 Bristol Bay season.

VII.

That Finding of Fact No. 11 made by the District Court is not supported by the evidence adduced before the Referee and the Commission, but on the contrary the conclusions of law and the decision of the Alaska Unemployment Compensation Commission were not supported by the findings and the evidence and the said decision was not proper and was not in accord with the evidence, and the said findings of the Commission were not sufficient, but on the contrary the Commission should have made findings of fact on matters which the Commission ignored, and which were necessary to a proper determination of the case, as follows:

1. What facts are necessary to show a "labor dispute" within the meaning of the Act? Must there be a strike, walk-out, presently existing employer-employee relationship terminated by dispute, picket line, a job to strike? What bearing does the absence of these factors have in the instant case? [285]

2. Is petitioners' unemployment "due" to a labor dispute, or is it "due" to the curtailment in Alaska Packers' Bristol Bay operations, and the failure of Alaska Salmon to operate for reasons unconnected with labor, and finally is not the unemploy-

ment of petitioners "due" to the seasonal nature of their work and the fact that they were never re-employed in 1940, rather than an alleged labor dispute?

3. If there was a dispute, how long did it remain in "Active" progress? Did not the dispute terminate when the employers abandoned their operations, for Karluk on April 10, 1940; Chignik on April 12, 1940; and Bristol Bay on May 3, 1940: Was not the Referee correct in so finding, and was not the Commission in error in not considering this fundamental finding, and indicating where it was wrong, if it was wrong?

4. In what way do negotiations which do not result in a contract constitute a labor dispute within the meaning of the Act?

VIII.

That Finding of Fact No. 12 made by the District Court is not supported by the evidence and the evidence shows, contrary to said finding, that the Alaska Salmon Company would not have conducted its 1940 Salmon packing operations regardless of whether a collective bargaining agreement had been entered into with the applicant union and its members or not.

IX.

That Finding of Fact No. 13 made by the District Court is not supported by the evidence; that petitioners did make objections to the findings of the Commission according to the provisions of the Alaska Unemployment Compensation Law by appealing the decision of said Commission to the above entitled Court and filing in this Court their petition for re-

view of said decision on January 8, 1941. That what this finding probably intended to state was that petitioners made no objections to and took no appeal from the findings of the Referee who heard the matter originally, and while it is true that petitioners did not appeal from the decision and findings of the Referee, that when respondent companies took an appeal to the Commission, the entire matter before the Referee was reopened before the Commission, and everything which applicants and appellants presented to the Commission on the respondents' appeal was therefore proper and according to law. The findings of the Commission are not conclusive upon appli- [286] cants and appellants because said findings are contrary to and not supported by the evidence and such a decision is appealable and the evidence may be reviewed to determine if it supports the findings, as provided by Section 6 (i) of the Alaska Unemployment Compensation Law.

X.

That Conclusion of Law No. 1 made by the District Court is in error and contrary to law in that applicants and petitioners were not unemployed because they were unwilling to accept employment offered them or because of a labor dispute which was in active progress during the entire 1940 Alaska salmon packing season but, on the contrary, said applicants and appellants were unemployed during the said 1940 season because respondent companies failed and refused to employ applicants and failed and refused to enter into a collective bargaining agreement

with the Union of which applicants were and are members. That said Conclusion of Law is contrary to and not supported by the evidence in that the evidence shows that if a labor dispute existed, it terminated at Chignik on April 12, 1940, at Karluk on April 10, 1940 and was not in existence at all at Bristol Bay during the said 1940 season, and therefore applicants and appellants were entitled to benefits accordingly.

XI.

That Conclusion of Law No. 2 made by the District Court is not proper and is contrary to law in that the definition therein stated of what constitutes an active labor dispute within the meaning of the Alaska Unemployment Compensation Law is wrong, but that an active labor dispute within the meaning of said law means an actual dispute between employer and employee whereby the relationship of employer and employee is terminated and employees remain away from work because of a dispute with their employer over wages, hours or other conditions or incidents to employment. That the declared purpose of the law requires that benefits be paid rather than denied in this case.

XII.

That Conclusion of Law No. 3 made by the District Court is improper and contrary to law in that the findings and decision of the Alaska Unemployment Commission are improper, not supported by the evidence, contrary to the evidence and contrary to law and thereby said [287] findings and decision should have been set aside and reversed. That claimants

are entitled to benefits for their unemployment during the entire 1940 season and should have been paid said benefits. That specifically applicants and appellants urge the following assignments of error in connection with the findings and decision of the Commission:

1. CERTAIN FINDINGS OF FACT MADE BY THE COMMISSION ARE NOT SUPPORTED BY THE EVIDENCE.

A. The Commission found as a fact that "negotiations for (a 1940) agreement were entered into between said parties (employers and Union) and were in active progress at the opening of the canning season as set forth in said Regulation No. 10." (Our underlining.)

Exception to said finding:

(1) Regulation No. 10 provides that the Bristol Bay season was to open on May 5, 1940. The evidence offered by the employers themselves (and petitioners do not dispute it) shows that the negotiations for the Bristol Bay operations terminated at midnight May 3, 1940, and that the employers abandoned the season at that time which they had fixed as their "deadline" to reach a 1940 agreement with the Union. (See Employers' Exhibit "X" Applicants' Exhibit "19", Tr. p. 226, 228, 232, testimony of J. Paul St. Sure. See also decision of Special Referee Henry Roden, p. 2, and p. 10, finding that negotiations for Bristol Bay terminated at mid-

night May 3, 1940, and that the employers abandoned the Bristol Bay season at that time.)

It follows without answer that the Commission's finding of fact that negotiations were in active progress at the opening of the season as fixed by Regulation No. 10 is in error and not supported by the evidence insofar as the Bristol Bay operations are concerned.

(2) In addition, the Alaska Salmon Company abandoned its entire 1940 operations on April 30, 1940, five days before the season at Bristol Bay opened. (See Applicants' Exhibit "2".) This company operates only at Bristol Bay. (Tr. p. 304, testimony of Mr. Peterson.) It follows that the applicants employed in 1939 by Alaska Salmon Company are unquestionably entitled to benefits, and the Commission's finding is in error insofar as [288] the Commission finds that Alaska Salmon Company was carrying on active negotiations at the time of the opening of the Bristol Bay season as fixed by Regulation No. 10.

We conclude that there were no negotiations for Bristol Bay after May 3, 1940 and that all applicants employed at Bristol Bay in 1939 are without question entitled to benefits for the full season and are subject to no labor dispute disqualification. This includes all the 1939 employees (members of the Union) of Alaska Salmon Company and Red Salmon Canning Company, who operate only at Bristol Bay; and those employees of Alaska Packers who were employed at Bristol Bay in 1939.

b. The Commission found as a fact that the em-

ployers notified the applicants "of the necessity of entering into a new working agreement for the canning season of 1940." (Our underlining.)

Exception to said finding:

(1) Insofar as this finding means that a new agreement was to be reached between the parties for the 1940 season if there was to be operation by the San Francisco operators, the finding is proper and supported by the evidence. But insofar as it leaves the inference that the operators were ready to sign an agreement but the Union was not, the finding is not supported by the evidence. The operators wanted to sign a 1940 agreement on terms less favorable to the Union than the Union enjoyed in 1939. The onus cannot be placed on the Union for failing to arrive at an agreement. The blame, if it belong anywhere, rests with the employers who without justification or reason wanted the Union to accept less favorable terms and conditions than the workers enjoyed in 1939, while the Union wanted at least a renewal of the 1939 agreement. The applicants were at all times ready, willing and able to work on 1939 wages and terms. (See Tr. P. 333, p. 335-336.) The use of the word "necessity is therefore not supported by the evidence insofar as the inference is left that the employers were not at fault in the failure of the parties to reach an agreement for the 1940 season.

(2) Alaska Salmon Company abandoned its 1940 operation on April 30, 1940 (Applicants' Exhibit "2"), and would not have operated during

1940 irrespective of whether there had been or had not been an agreement with the union. (See Tr. p. 320, stipulation by Mr. Oliver, [289] counsel for Alaska Salmon, to that effect.)

It follows that the operators and particularly Alaska Salmon Company did not find it "necessary" to reach an agreement for the 1940 season.

2. THE CONCLUSIONS OF LAW AND DECISION ARE NOT SUPPORTED BY THE FINDINGS OF FACT.

a. The Commission concluded that "there was an active labor dispute existing between the parties at the opening of the season."

This conclusion must be separated into its two parts: First, that that was a "labor dispute", and second, that there was an "active" labor dispute at the opening of the season.

The Commission's "findings of fact" can be briefly summarized as follows:

1. That all applicants were employees of the employers during the 1939 seasonal canning industry as provided in Regulation No. 10.

2. That the employers cancelled the 1939 agreement with the Union.

3. That the employers notified the Union of the "necessity" of entering into a new agreement for the 1940 canning season.

4. That the Union admitted receipt of the Notice of the cancellation of the 1939 agreement.

5. That thereafter, negotiations for the 1940 season occurred.

6. That the salmon cannery industry is seasonal.

7. That dates for which unemployment benefits could be allowed were provided by Regulation No. 10.

8. That employers and applicants were aware of this condition.

9. That the dates of operation of the canneries in the districts involved in this controversy as fixed by Regulation No. 10 are as follows:

Karluk: April 5-September 25;
Chignik: April 1-September 10;
Bristol Bay: May 5-August 25.

10. That following the notice of cancellation of the 1939 agreement by employers, negotiations for a 1940 agreement between the parties commence.

11. That the negotiations were in active progress at the opening of the season as set forth in Regulation No. 10. [290]

12. That no agreement was ever entered into between the parties prior to the opening of the season, or thereafter.

13. Quoting from the Declaration of Territorial Public Policy of the Act that benefits were to be paid to persons unemployed through no fault of their own.

(1) Petitioners submit that these findings do not support a conclusion that a "labor dispute" existed between the parties. All that can be concluded from the Commission's findings is that the parties negotiated for, but did not arrive at a 1940 agreement. We submit, that is not a "labor dispute" within the meaning of the Act. There are

no findings to support a conclusion that a "labor dispute" existed.

(2) Petitioners submit that these findings do not support the conclusion that there was an "active labor dispute existing between the parties at the opening of the season". (Our underlining.) The Commission has failed to separate the various areas of operation with regard to the opening of the season. For the sake of argument (but not admitting it) let us say a "labor dispute" occurred between the parties. The employers abandoned the Chignik operation on April 12, 1940; the Karluk operation on April 10, 1940; and the Bristol Bay operation on May 3, 1940. After those dates, the employers and the Union did nothing with regard to the 1940 season for the respective areas. The parties dropped the matter, the employers called off the season, and in the words of Referee Roden, the parties treated the matter as a "dead horse". (See decision of Referee Roden p. 2, pp. 17-18; Employers' Exhibits "U" and "X"; Applicants' Exhibits "2" and "19".)

Bear in mind that the seasons opened as follows:

Karluk, April 5th;
Chignik, April 1st;
Bristol Bay, May 5th.

While it may be argued that the "labor dispute" was in active progress with respect to Chignik and Karluk by reference to the above dates at the opening of the season in those areas, the same thing can-

not be said for Bristol Bay. There the "dispute" terminated, the negotiations ended, and the season was abandoned on May 3, 1940 two days before the season opened. We submit that there was no "active labor dispute" at Bristol Bay at the "opening of the season" there. [291]

Therefore, the conclusion that "an active labor dispute existed between the parties at the opening of the season" is not supported by the findings of fact.

b. The Commission concluded that "the dispute continued". (Our underlining.)

That conclusion is not supported by the findings. There are no findings that the dispute (if there was one) continued to any particular day with reference to any of the three areas in question. Nor is there any conclusion regarding the day to which the "dispute" continued. For all that appears from the decision, the dispute still continues and will continue to continue, and there is no indication as to when it will end if ever. As a matter of fact, the dispute, if there was one, ended with regard to Karluk on April 10, 1940; at Chignik on April 12, 1940; and at Bristol Bay on May 3, 1940; all as noted above.

c. The decision reversing the Referee, and disqualifying petitioners for eight weeks each is in error, because as indicated above there are no findings to support a conclusion that a labor dispute existed, or that if there was a dispute, that it continued beyond the dates mentioned for the respec-

tive areas; and the decision is in error in disregarding the uncontradicted evidence that the negotiations for Bristol Bay ended, and the season for that area was abandoned, on May 3, 1940, two days before the season was to open.

3. THE CONCLUSIONS OF LAW AND DECISION ARE NOT SUPPORTED BY THE EVIDENCE.

a. The conclusion that there was a "labor dispute" is not supported by the evidence.

The uncontradicted evidence shows that the Union did not declare a strike, and did not picket the employers, and did not strike or picket because there was no operation to strike or picket; that there was no employer-employee relationship existing between the parties at the beginning of the 1940 season; that the last time the petitioners were employees of the employers or on their payroll was at the conclusion of the 1939 season, and when that season ended, the employee-employer relationship between the parties ended.

The evidence further shows that the employers wanted the Union to accept a reduction of the 1939 San Francisco contracts, and only [292] offered the Union either the 1939 or 1940 Seattle agreement, whichever was most favorable to the Union. That the employers never retreated from this stand. That the Union proffered a 1940 contract which was more advantageous to it than the 1939 San Francisco contract. That this was rejected by the employers, and the Union finally offered to re-execute the 1939

San Francisco contract, which the employers refused. That the Employers abandoned their respective operations as their stated "deadlines" occurred; Karluk, April 10, 1940; Chignik, April 12, 1940; Bristol Bay, May 3, 1940. That thereupon the matter was dropped by both parties, and nothing further was done between them with regard to the 1940 season. There were meetings between the parties for negotiation purposes. The evidence shows that the negotiations were carried on in a friendly manner. The petitioners were ready, able and willing to work in 1940 on the same wages and conditions that they enjoyed out of San Francisco in 1939. That Alaska Salmon Conmpany would not have operated in 1940 even if an agreement had been reached with the Union. That the Alaska Packers were going to curtail their operations and employment at Bristol Bay one-third on account of the Government ordered curtailment in fishing.

We submit that these facts do not show a "labor dispute" within the meaning of the Act.

b. The Conclusion that there was an "active" labor dispute is not supported by the evidence.

It has been fully stated hereinabove (and reasons and citations given) that if there was a dispute, it was not in active progress at Karluk after April 10, 1940; nor at Chignik after April 12, 1940; nor at Bristol Bay after May 3, 1940. So Referee Roden found, and the evidence and reason support that finding (Decision of Referee, pp. 17-18) and the Commission does not examine nor dispute this finding. The Commission merely lays down an unsup-

ported conclusion and fiat that a dispute was in "active" progress.

The Act provides that a labor dispute, to disqualify an applicant, must be in active progress with respect to "any week" for which the applicant is disqualified. In other words, if there is a dispute in existence for one week, that disqualifies the applicant only for that one week, but not thereafter. Therefore, if there was a dispute, it [293] ended at Karluk on April 10, 1940, and at Chignik on April 12, 1940, and applicants last employed in 1939 in plants at those areas are not disqualified after those dates that the dispute was not in "active" progress.

With regard to Bristol Bay, the dispute ended on May 3, 1940 two days before the season opened. Petitioners would not be entitled to benefits until the season opened on May 5, and at that time there was no dispute in active progress. The dispute was then a thing of the past. Therefore, there is no disqualification with regard to the employees who were last employed in 1939 in Bristol Bay.

Furthermore, an "active" labor dispute, means a strike and picket line, an operation which is interrupted by such dispute. It is admitted that there was neither strike nor picket line here, nor could there be, because the workers never started to work in 1940; there was no job to strike; no employer-employee relationship to terminate. Therefore, there was no labor dispute in "active" progress. A dispute in active progress would mean that there would be a way to end it, and therefore if the workers started it (thereby disqualifying themselves)

they could end it (thereby removing the disqualification). But here, the employers abandoned the season on their "deadline" dates, and that was all there was to the 1940 season so far as these petitioners are concerned.

c. The conclusion that the dispute "continued" is contrary to the evidence.

It has already been adequately set out herein that the dispute (if there was one) ended on the dates the employers abandoned their respective operations, and that the dispute became a dead letter on those dates. The Commission's conclusion that the dispute "continued" could mean that the dispute continued indefinitely and in fact still continues. That conclusion, or any conclusion that the dispute continued after the dates set out hereinabove, is contrary to the evidence.

d. The decision is in error in that there is neither finding nor conclusion that petitioners' unemployment during the 1940 salmon canning season was "due" to a labor dispute in active progress at the premises where last employed (which means at the conclusion of the 1939 season), and not "due" to other causes.

The Commission merely found a "labor dispute" and disqualified applicants. The Commission does not consider whether applicants were unemployed at Alaska Packers because of the curtailment. It is admitted that this company, if it operated during 1940, was going to hire one-third fewer workers than in 1939, at least at Bristol Bay operations. (Tr. p. 270, testimony of Mr. Tichenor.)

It is admitted that Alaska Salmon Compaany would not hove operated in 1940 even had an agreement with the Union been signed. (Tr. p. 326). Therefore, it would follow that the employees of Alaska Packers [294] (at Bristol Bay) and Alaska Salmon would not be disqualified in any event because their unemployment would not be "due" to a labor dispute insofar as it would be difficult to determine which one-third of the employees last employed by Alaska Packers at Bristol would be unemployed during 1940 because of the curtailment, the doubt must be resolved in favor of the applicants, because the Act is remedial in nature and therefore must be liberally construed so as to pay, and not to deny benefits, and therefore all applicants so employed in 1939 should not be subject to any "labor dispute" disqualification.

Finally, petitioners' unemployment is "due" to the seasonal lay-off; that is petitioners became unemployed when the 1939 season ended, and never became reemployed for 1940. Therefore, their unemployment is due to the seasonal nature of their work, and not to any alleged labor dispute.

4. THE FINDINGS OF FACT MADE BY THE COMMISSION COMPEL A DECISION CONTRARY TO THE ONE RENDERED.

The findings show that the employers cancelled the 1939 contract, and that negotiations occurred between the parties, but that the parties did not arrive at a 1940 agreement. Therefore, it appears that had not the employers cancelled the 1939 con-

tract, operations would have taken place during 1940 on the basis of the 1939 contract which would have continued in existence. Therefore, the onus falls on the employers because it was their affirmative action which started the "dispute" and petitioners are unemployed not through their own fault but because of the employers' actions in attempting to undercut 1939 wages and conditions.

Nor do the findings of fact establish any labor dispute. They only show negotiations which were not consummated by agreement. They show no strike, no walk-out, no picket line, no presently existing employer-employee relationship terminated, in fact, no job to strike. It follows that the findings made, and the absence of other findings necessary to show a labor dispute, compel a decision that there was no labor dispute.

5. THE DECISION IS CONTRARY TO LAW.

1. The decision is wrong in holding that the facts in this case constitute a "labor dispute" within the meaning of the Act. [295]

2. The decision is wrong in holding that there was a labor dispute in "active progress" within the meaning of the Act when the season opened, and that the dispute "continued".

3. The decision is wrong in holding that there was a labor dispute in "active progress" within the meaning of the Act after April 10, 1940 at Karluk, April 12, 1940 at Chignik, and after May 3, 1940 at Bristol Bay.

4. The decision is wrong in holding that petitioners' unemployment is "due" to a labor dispute.

The Commission has decided that where an employer cancels a collective bargaining agreement with a union and in its stead seeks to establish a contract giving lower wages and poor conditions to the workers and the workers refuse to accept the same, as a result of which the employers abandon operations in a seasonal industry, work for the new season never having started, that this constitutes a "labor dispute in active progress" for the entire season of said seasonal industry within the meaning of the Act, and disqualifies the workers for benefits for a period of eight weeks as provided by the Act.

In petitioners' opinion, this is a plain misinterpretation of the Act, is contrary to the better reasoned decisions on the subject of what constitutes a "labor dispute in active progress" within the meaning of the unemployment insurance laws, and violates the spirit and purpose of the Act. The facts in this case do not constitute a "labor dispute" within the meaning of the Act as a matter of law.

If the Commission's decision is allowed to stand it is an invitation to employers to cut wages (even though no basis exists or is offered) and if workers refuse to accept the cuts, then they also shall be denied unemployment benefits. The Act would thus operate to hurt rather than help workers as it its declared purpose.

Unemployment Laws are remedial in nature. They are to be liberally construed, and every intendment is in favor of paying benefits rather than denying them. All doubts must be resolved in favor of petitioners.

The "labor dispute" disqualifications *in* included in the Act only so that these funds will not support a strike. The eight weeks period was fixed because the records and figures on labor disputes show that the average length of a strike is eight weeks. (See Decision of Referee, pp. 16-17). There was no "dispute" or "strike" here [296] which unemployment funds were sought to finance. There was only a failure to negotiate a 1940 contract, and abandonment by the packers of the 1940 season, even though the workers were ready, willing and able to work on the same contract that they had in 1939. Certainly the workers' position was a fair one. They were unemployed through no fault of their own, and if the blame belongs anywhere, it is with the employers who tried to cut wages and conditions. A liberal construction of the Act, and serving the purposes for which the Act was adopted compel a decision in favor of petitioners.

XIII.

That the opinion of the District Court of April 30, 1942 is contrary to law in that the statements, findings and conclusions therein stated are not supported by the evidence and is based upon the erroneous interpretation of the Alaska Unemployment Compensation Law and particularly upon an

erroneous conception of what constitutes a "labor dispute" and what constitutes a labor dispute in "active progress" within the meaning of said law; that the errors in said opinion are substantially the same as those contained in the decision of the Commission and the specific assignments of error with respect to the Commission's findings and decision set forth in assignment of error No. XII are equally applicable to, and are adopted in full in the instant assignment of error.

Wherefore, applicants and appellants pray that the judgment may be reversed.

Dated at San Francisco, California, October 26, 1942.

ANDERSEN & RESNER
GEORGE R. ANDERSEN
HERBERT RESNER

Receipt of a copy of the foregoing is hereby acknowledged this 4th day of November, 1942.

H. L. FAULKNER
Attorneys for Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company, corporations, Respondents.

GROVER C. WINN
Atty. for Alaska Unemployment Comp. Comm.

[Endorsed]: Filed November 4, 1942. [297]

[Title of District Court and Cause.]

ORDER GRANTING LEAVE TO APPEAL.

The petitioners and appellants in the above entitled action having on November 4th, 1942, at Juneau, Alaska, served and filed, and on November 6th, 1942, at Ketchikan, Alaska, presented to the court, their assignment of errors and petition for leave to appeal and prayer for reversal to the United States Circuit Court of Appeals for the Ninth Circuit, all within the period of three months from the date of the decree entered herein on August 8th, 1942; and it further appearing to the court that said petitioners and appellants had theretofore, on October 31st, 1942, served and filed their notice of appeal and thereafter filed their $250.00 cost bond with Maryland Casualty Company surety, both whereof were presented to the court at Ketchikan on November 6th, 1942, with said assignment of errors and said petition for allowance of appeal; and that on November 6th, 1942 all of the foregoing were taken under advisement by the court,—

Now, therefore, the law and the premises being fully understood and considered by the court, it is hereby ordered that leave be, and hereby is, granted to said petitioners and appellants to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the said judgment of August 8th, 1942 of the District Court for the Territory of Alaska, Division Number 1, at Juneau, as provided by law; and it is further ordered that the Clerk of

the District Court for the Territory of Alaska, Division Number 1, at Juneau, be, and he is hereby, directed and ordered to prepare and certify a transcript of the evidence, exhibits and all records, proceedings, papers and judgment in the above entitled cause, and transmit the same to the Clerk of the [298] United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within forty (40) days from date; and it is further ordered that said cost bond on appeal be, and same hereby is, approved.

Dated: Juneau, Alaska, this 30th day of January, 1943, nunc pro tunc as and for November 6th, 1942.

GEO. F. ALEXANDER,
District Judge.

Copy received January 28.

H. L. FAULKNER.

[Endorsed]: Filed and entered January 30, 1943.

[299]

[Title of District Court and Cause.]

NOTICE ON APPEAL

Notice is hereby given that the above named Petitioners and plaintiffs hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the

final decree entered in this action at Juneau, Alaska, on August 8th, 1942.

Signed: ANDERSEN & RESNER, of
San Francisco, California,
Counsel of Record.
By HOWARD D. STABLER,
Local Counsel of Attorneys
for Appellants.

Copy hereof received at Juneau, Alaska, October 31, 1942.

GROVER C. WINN,
Attorney for Unemployment
Compensation Commission
of Alaska.
H. L. FAULKNER,
Attorney for Alaska Packers
Association, Alaska Salmon
Company, and Red Salmon
Canning Company.

[Endorsed]: Filed October 31, 1942. [300]

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men By These Presents: That we, the above named Petitioners, as principal, and Maryland Casualty Company as surety, are held and firmly bound unto the above named defendants and the Territory of Alaska in the sum of Two Hundred and Fifty Dollars ($250.00) to be paid to

them, and for the payment of which well and truly to be made, we bind ourselves, and each of us, our, and each of our, heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 4th day of November, 1942.

Whereas, the above named Petitioners, as appellants, seek to prosecute their appeal in the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree rendered in the above entitled action by the District Court for the Territory of Alaska, Division Number One,—

Now, therefore, the condition of this obligation is such that if the above named appellants shall prosecute their appeal to effect, and answer all costs and damages that may be adjudged, if they shall fail to make good their appeal, then this obligation to be void; otherwise to remain in full force and virtue.

FRANK L. ARAGON,
and other Applicants,
Members of Alaska Cannery Workers Union Local No. 5 and Alaska Cannery Workers Union Local No. 5, on behalf of Applicants,
By HOWARD D. STABLER,
Their Attorney in fact.

MARYLAND CASUALTY
[Seal] COMPANY, Surety,
By ALLEN SHATTUCK,
Its Agent and Attorney in fact.

[Endorsed]: Filed November 4, 1942. [301]

[Title of District Court and Cause.]

ORDER EXTENDING TERM & TIME FOR APPEAL AND FOR APPEAL AND FOR PRESENTING BILL OF EXCEPTIONS.

On this sixth day of November, 1942, this matter came before the Court at Ketchikan, Alaska, for an order extending the term and time for filing and presenting a bill of exceptions and perfecting appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the within entitled action for additional period of 40 days from and after expiration of the three months from August 8th, 1942, allowed by law therefor.

And it appearing to the Court that attorneys for defendants herein have made and filed objections to the granting of such order, and that the records and files herein are at Juneau, Alaska, and that the Court has insufficient information or recollection thereof to enable him to pass on the merits of said motion intelligently without the records and files herein, and said records and files cannot be secured or made available to the Court for some

time, due to present uncertainties and delays in the mails and other transportation.

And it further appearing that the attorneys for defendants reside in Juneau, Alaska, and that defendants have a resident attorney there, and only has a special attorney here who has had no previous connection with this case, and said attorneys for defendants having requested that plaintiffs' motion be heard on its merits before being passed upon.

And it further appearing that this Court is now engaged in holding a regular jury term of this court at Ketchikan and will not be able to finish here so as to be able to return to Juneau for at least a month hence, and the Court being convinced that the ends of justice require that such extension of time be made. [302]

Now, Therefore, the premises considered, it is hereby ordered that the time for hearing the motion hereinbefore mentioned and referred to, be and the same is hereby extended for 45 days from this date, subject to any and all rights in the premises which the parties or either of them now have, all of which present rights are hereby preserved until plaintiffs' motion can be heard and decided on its merits.

Done in Ketchikan, Alaska, this 6th day of November, 1942.

GEO. F. ALEXANDER
Judge.

[Endorsed]: Filed and entered November 6, 1942.

[303]

[Title of District Court and Cause.]

ORDER FURTHER EXTENDING TERM AND TIME FOR APPEAL AND FOR PRESENTING BILL OF EXCEPTIONS.

On December 19th, 1942, this matter came before the above entitled court at Juneau, Alaska, on petitioners' oral motion for extension of the time specified in the court's order in the within entitled action made at Ketchikan, Alaska, on November 6th, 1942, for an additional forty (40) days for the reasons that the time specified in said order made November 6th, 1942, would soon expire, and the records and files in said action had not yet been returned from Ketchikan. Attorney Howard D. Stabler represented the petitioners; and attorney H. L. Faulkner represented the Defendants and Respondents. And, said attorney for the Defendants and Respondents consenting, it was Ordered that the time for presenting and hearing the matters specified in said order of November 6th, 1942, be, and same was, extended for the additional period of forty (40) days from December 19th, 1942; and provided that within said extended period of time, when said records and files were returned, said matters should be presented and heard at the convenience of respective counsel and the court.

Done at Juneau, Alaska, the day, month and year hereinabove first written.

GEO. F. ALEXANDER
District Judge.

Copy Hereof Received
H. L. FAULKNER
Attorney for Defendant Respondents.

[Endorsed]: Filed and entered December 22, 1942.

[304]

[Title of District Court and Cause.]

STIPULATION FOR HEARING

It is stipulated by and between respective counsel for the parties hereto that the appeal, if allowed, in the above entitled matter, shall be presented to and heard in the United States Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco, California; and that the title of the court and cause may be omitted by the Clerk of the above court from the transcript of record in the above entitled cause, after the title of the cause has been once printed.

Dated: October 26, 1942.

ANDERSEN & RESNER
By: HERBERT RESNER
(Attorneys for Appellants)

GROVER C. WINN
Attorney for Unemployment Compensation Commission of the Territory of Alaska; Noble Dick, R. E. Hardcastle and R. S. Bragaw, as members of and constituting said Commission.

H. L. FAULKNER
Attorneys for Alaska Packers, Association, Alaska Salmon Company, and Red Salmon Canning Company, corporations.

[Endorsed]: Filed February 13, 1943 [305]

CITATION

United States of America,—ss.

The President of the United States of America to Unemployment Compensation Commission of the Territory of Alaska; Noble Dick, R. E. Hardcastle and R. S. Bragaw, as members of and constituting said Commission; and Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company, corporations, respondents, Greeting:

You Are Hereby Cited and Admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within forty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court

for the Territory of Alaska, Division No. 1, at Juneau, wherein Frank L. Aragon and other applicants, Members of Alaska Cannery Workers Union Local No. 5, and Alaska Cannery Workers Union Local No. 5, on behalf of applicants, are appellants, and you are appellees, to show cause, if any there be, why the decree or judgment rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Geo. F. Alexander United States District Judge for the Territory of Alaska, Division 1, at Juneau, this 13th day of February, A. D. 1943

[Seal] GEO. F. ALEXANDER
United States District Judge.

O.K.
GROVER C. WINN

Copy received Feb. 13-1943
H. L. FAULKNER
Atty for Alaska Packers Assn.
et al [306]

United States of America,—ss.

On this 13th day of February, in the year of our Lord one thousand nine hundred and Forty Three, personally appeared before me, Howard D. Stabler, the subscriber, a citizen of the United States, over 21 years of age, and competent to be a witness in the within matter and makes oath that he delivered

a true copy of the within citation to Grover C. Winn attorney of record for Unemployment Compensation Commission of the Territory of Alaska; Noble Dick, R. E. Hardcastle and R. S. Bragaw, as members of and constituting said Commission; and to H. L. Faulkner, attorney of record for Alaska Packers Association, Alaska Salmon Company, and Red Salmon Canning Company,

HOWARD D. STABLER

Subscribed and sworn to before me at Juneau, Alaska, this 13 day of February, A. D. 1943

[Seal] ROBERT E. COUGHLIN
Clerk of District Court Territory of Alaska, Division #1

[Endorsed]: Filed Feb 13, 1943 [306a]

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the above entitled Court:

Please prepare as the record on appeal in the above entitled matter the following:

1. Transcript of evidence, all exhibits, and all files, but excluding briefs, of Referee's hearing before the Alaska Unemployment Commission.
2. Decision of Referee dated September 21, 1940.
3. Decision of Alaska Unemployment Commission dated November 18, 1940. [307]
4. Petition for review in the above entitled Court.

5. Summons on petition for review in the above entitled Court.

6. Respondent's answer to petition for review in the above entitled Court.

7. Request to set definite time for hearing of to submit briefs in the above entitled Court.

8. Stipulation submitting cause on briefs in the above entitled Court.

9. Opinion of Honorable George F. Alexander dated April 30, 1942 in the above entitled Court.

10. Findings of Fact and Conclusions of Law in the above entitled Court.

11. Judgment and Decree in the above entitled Court.

12. Petition for leave to appeal in the above entitled Court.

13. Assignment of Errors in the above entitled Court.

14. Order granting leave to appeal in the above entitled Court.

15. Notice of appeal; cost bond on appeal.

16. Order of November 6, 1942 and December 19, 1942, extending time to perfect appeal etc.

17. Stipulation for hearing to be had at San Francisco in the United States Circuit Court of Appeals for the Ninth Circuit.

18. Citation to respondents in the above entitled Court. Dated: February 13, 1943.

19. This Praecipe.

ANDERSEN & RESNER
HERBERT RESNER
Attorneys for applicants and appellants.

OK Copy received.

GROVER C. WINN

Copy received Feb. 13-1943

H. L. FAULKNER
Atty for Alaska Packers' Assn et al [308]

The United States Circuit Court of Appeals
for the Ninth Circuit

No. .....

FRANK L. ARAGON, and other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL NO. 5, on behalf of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA; NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as members of and constituting said Commission; and

ALASKA PACKERS ASSOCIATION, a corporation; ALASKA SALMON COMPANY, a corporation, and RED SALMON CANNING COMPANY, a corporation,

Appellees.

ORDER EXTENDING TIME TO FILE RECORD ON APPEAL

The Court having read and considered the affidavit of Herbert Resner filed herein, and Good Cause Appearing to the Court Therefor,

It Is Hereby Ordered that Appellants' time to file the record on appeal herein is extended to and including May 15, 1943.

Done in Chambers This 16th day of April, 1943.

CURTIS D. WILBUR
Senior Judge of the Circuit Court of Appeals for the Ninth Circuit.

Copy received April 24, 1943.

H. L. FAULKNER,
Atty for Alaska Packers Association et al.

[Endorsed]: Filed April 24, 1943. [309]

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT OF HERBERT RESNER

State of California
City and County of San Francisco—ss.

Herbert Resner, being first duly sworn, deposes and says: That he is of counsel for appellants in the above entitled matter; that an appeal is being taken by appellants to the above entitled Court from an Order from the District Court for the Territory of Alaska, Division Number One; that the record has not yet been completed and made ready for filing by the Clerk of said District Court; that affiant is in receipt of a telegram from counsel associated with him at Juneau, Alaska, as follows:

"Juneau, Alaska, April 14, 1943.

"Anderson and Resner Attys

"544 Market St. San Francisco

"It will be another ten days or more before our

Clerk will have the Aragon record ready to forward to you for filing in Circuit Court and I think you should arrange enlargement of time in Appellate Court for filing same Stop They are short handed here and are delayed getting it out.

"HOWARD D. STABLER."

Wherefore, affiant prays that the time for appellants to file the record herein be extended to and including May 15, 1943.

HERBERT RESNER

Subscribed and sworn to before me this 15th day of April, 1943.

[Seal] ALICE C. MORSE

Notary Public, in and for the City and County of San Francisco, State of California. [310]

In the District Court for the District of Alaska
Division No. 1, at Juneau

United States of America,
District of Alaska,
Division No. 1—ss.

CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD

I, Robert E. Coughlin, Clerk of the District Court for the Territory of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 310 pages of typewritten matter, numbered from 1 to 310, both inclusive, constitute a full, true, and com-

plete copy, and the whole thereof, of the record prepared in accordance with the praecipe of the appellant on file herein and made a part hereof, in cause No. 4620-A wherein Frank Aragon et al are appellants and Unemployment Compensation Commission of Alaska, et al are the appellees and Alaska Packers Association and Alaska Salmon Co. and Red Salmon Company, corporations, are respondents as the same appears of record and on file in my office, and that said record is by virtue of an appeal and Citation issued thereon in this cause and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to One hundred fifty eight & 75/100 (158.75) Dollars has been paid to be my counsel for Appellants.

In Witness Whereof I have hereunto set my hand and the seal of the above-entitled Court this 3rd day of May, 1943.

[Seal] ROBERT E. COUGHLIN
Clerk
By J. W. LEIVERS
Deputy

[Endorsed]: No. 10425. United States Circuit Court of Appeals for the Ninth Circuit. Frank L. Aragon and other applicants, Members of Alaska Cannery Workers Union Local No. 5, and Alaska Cannery Workers Union Local No. 5 on behalf of applicants, Appellants, vs. Unemployment Compensation Commission of the Territory of Alaska, Noble Dick, R. E. Hardcastle and R. S. Bragaw, as members of and constituting said Commission, and Alaska Packers Association, a corporation, Alaska Salmon Company, a corporation, and Red Salmon Canning Company, a corporation, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Territory of Alaska, First Division.

Filed May 7, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10425

FRANK L. ARAGON, and other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL NO. 5, on behalf of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA; NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as members of and constituting said Commission; and ALASKA PACKERS ASSOCIATION, a corporation; ALASKA SALMON COMPANY, a corporation, and RED SALMON CANNING COMPANY, a corporation,

Appellees.

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON APPEAL.

Appellants hereby adopt as their points on appeal each and every one of the Assignments of Error appearing in the Transcript of the record on file herein, which Assignments of Error were made in the Court below.

Dated: San Francisco, California, May 10, 1943.

ANDERSEN & RESNER
GEORGE R. ANDERSEN
HERBERT RESNER
HOWARD STABLER
Attorneys for Appellants.

Receipt of a copy of the within Statement of Points on which Appellants Intend to Rely on Appeal is hereby admitted this 12 day of May, 1943.

PILLSBURY, MADISON & SUTRO
Attorneys for Respondents, Alaska Packers Association

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT OF SERVICE BY MAIL OF STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON APPEAL.

State of California
City and County of San Francisco—ss.

Ann Ferguson, being first duly sworn, deposes and says:

That she is now and at all times herein mentioned was a citizen of the United States, residing at 3415 Pierce Street in the City and County of San Francisco, State of California, where the mailing herein referred to took place; that she is over the age of twenty-one years, not a party to the

within entitled cause, or interested in the event thereof; that she has hertofore, to-wit: On the 12th day of May, 1943, made this service for Andersen & Resner, who are the attorneys for the Appellants in this action, and who have their offices at 544 Market Street, San Francisco, California; that Faulkner & Banfield are the attorneys for the Appellees, Alaska Packers Association, Alaska Salmon Company and Red Salmon Company, and the offices of said attorneys for said Appellees were at all times herein mentioned and still are located at Juneau, Alaska; that Grover C. Winn is the attorney for the Appellee, Unemployment Compensation Commission of the Territory of Alaska, and the offices of said attorney for said Appellee were at all times herein mentioned and still are located at Juneau, Alaska; that Earl, Hall & Gerdes are the attorneys for the Appellee, Alaska Salmon Company, and the offices of said attorneys for said Appellee were at all times herein mentioned and still are located at 215 Market Street, San Francisco, California; that at all times herein mentioned there was and still is regular communication by United States mail between the said City and County of San Francisco and said Juneau, Alaska, and between points in the City and County of San Francisco; that on the 12th day of May, 1943, deponent served the within Statement of Points On Which Appellants Intend To Rely On Appeal for the above named Andersen & Resner, attorneys for said Appellants, by mail, in the following manner, to-wit: deponent inclosed said Statement of Points On

Which Appellants Intend To Rely On Appeal in envelopes addressed as follows:

Faulkner & Banfield
Attorneys at Law
Juneau, Alaska

Grover C. Winn, Esq.
Attorney at Law
Juneau, Alaska

Earl, Hall & Gerdes
Attorneys at Law
215 Market Street
San Francisco, California

sealed the same, and deposited them, on the last named day, so sealed and addressed, with the said enclosure, and with the postage thereon fully prepaid, in the United States Post Office, in the City and County of San Francisco, State of California.

ANN FERGUSON

Subscribed and sworn to before me this 12th day of May, 1943.

[Seal] ALICE C. MORSE

Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed May 13, 1943. Paul P. O'Brien, Clerk.

CLERK'S COPY.

Vol. III

TRANSCRIPT OF RECORD

(Pages 769 to 796)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 309

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE, ET AL., ETC., PETITIONERS,

vs.

FRANK L. ARAGON AND OTHER APPLICANTS, MEMBERS OF ALASKA CANNERY WORKERS UNION LOCAL No. 5, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 10, 1945.

CERTIORARI GRANTED OCTOBER 8, 1945.

Office - Supreme Court, U. S.
FILED
AUG 10 1945
CHARLES ELMORE CROPLEY
CLERK

TRANSCRIPT OF RECORD
IN THREE VOLUMES

IN THE

Supreme Court of the United States

October Term, 1945

No. 309

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as Members of and Constituting said Commission, and ALASKA PACKERS ASSOCIATION, a corporation, ALASKA SALMON COMPANY, a corporation, and RED SALMON CANNING COMPANY, a corporation,

Petitioners,

vs.

FRANK L. ARAGON and Other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL No. 5 on Behalf of Applicants,

Respondents.

VOLUME III

Pages 769 to 795.

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Rotary Colorprint 661 Howard Street San Francisco

No. 10425

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FRANK L. ARAGON and Other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL No. 5 on Behalf of Applicants,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as Members of and Constituting said Commission, and ALASKA PACKERS ASSOCIATION, a corporation, ALASKA SALMON COMPANY, a corporation, and RED SALMON CANNING COMPANY, a corporation,

Appellees.

Upon Appeal from the District Court for the Territory of Alaska, First Division

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PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Thursday, January 18, 1945.

Before: Denman, Healy and Bone,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeal herein argued by Mr. Herbert Resner, counsel for appellants, and by Mr. E. Coke Hill, counsel for appellee, Unemployment Compensation Commission of Alaska, and by Mr. Marshall P. Madison, counsel for appellees, Alaska Packers Association, et al., and submitted to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday, May 15, 1945.

Before: Denman, Healy and Bone,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINIONS AND FILING AND RECORDING OF DECREE

By direction of the Court, Ordered that the type-

written opinion and dissenting opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the majority opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon Appeal from the District Court for the Territory of Alaska, First Division

Before: Denman, Healy and Bone,
Circuit Judges.

Denman, Circuit Judge:

OPINION AND DISSENTING OPINION

This is an appeal from a judgment of the District Court of the United States for the Territory of Alaska, rendered in a proceeding to review a decision of the Unemployment Compensation Commission of the Territory. Under the Alaska Unemployment Compensation law[1] appellant employees, hereafter called appellants, were admittedly entitled to unemployment compensation from the Commission for the several months' period fixed by the Commission's Regulation 10 of the fishing season of 1940 at the fishing and canning plants of the appellee corporations, hereafter called Canners, at Chignik, Karluk and Bristol Bay, Alaska.

---

[1] Alaska Stats., Ch. 4, Extraordinary Session Laws of 1937, as amended by Ch. 1 and 51, S.L. 1939—hereafter designated Act.

The beneficent purpose of the Unemployment Compensation Law of Alaska is stated in its "Declaration of Territorial Public Policy," as follows:

> "Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this Territory. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life * * * *"

The question here for determination is whether eight weeks' time should be deducted from the admitted period of unemployment and appellants' awards reduced by the compensation otherwise due for that period by reason of a claimed labor dispute in active progress for the eight weeks at the "factory, establishment or other premises" of the Canners, within the meaning of an exceptive provision of the Act, as follows:

> "Section 5. Disqualification For Benefits. An individual shall be disqualified for benefits:
> * * * * *
>
> "(d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment

> or other premises at which he is or was last employed; provided that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute; * * *"

Such an exception to the beneficence of the Act must be strictly construed. In the recent case of Phillips v. Walling, ... U.S. ....., decided by the Supreme Court on March 26, 1945, that Court considered the question of the rule of construction of the word "establishment" in a similar exception to the Fair Labor Standards Act of 1938, 52 Stat. 1060, 1067, 29 U.S.C. § 213(a) (2), that the wage and hour provisions of the Act shall not apply with respect to " 'any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce.' The issue posed by this case is whether employees working in the warehouse and central office of an interstate grocery chain store system are 'engaged in any retail * * * establishment' within the meaning of Section 13(a) (2) so as to be exempt from the wage and hour provisions."

The Court states the rule of construction of exceptions to such humanitarian and remedial legislation, as here the Alaska Compensation Law is declared to be, as follows:

> "The Fair Labor Standards Act was designed 'to extend the frontiers of social progress' by 'insuring to all our able-bodied working men and women a fair day's pay for a fair day's work.' Message of the President to Con-

gress, May 24, 1934. Any exemption from such humanitarian and remedial legislation must therefore be narrowly construed, giving due regard to the plain meaning of statutory language and the intent of Congress. To extend an exemption to other than those plainly and unmistakably within its terms and spirit is to abuse the interpretative process and to frustrate the announced will of the people. We accordingly agree with the two courts below that the exception contained in Section 13(a) (2) is inapplicable in this case and that the employees involved are entitled to the benefits of the wage and hour provisions of the Act. We hold, in other words, that the warehouse and central office of petitioner's chain store system cannot properly be considered a retail establishment within the meaning of Section 13(a) (2)."

In so holding, the Supreme Court states that "Prior to the adoption of the Fair Labor Standards Act the term 'establishment' was used in the sense of physical place of business by many census reports, business analyses, administrative regulations, and state taxing and regulatory statutes * * *" (Emphasis supplied.)

Prior to the Phillips decision this circuit held in Canadian Pac. Ry. v. United States, 73 F. 2d 831, 834, a similar strict construction of a proviso excepting certain carriers from liability for overtime pay to employees of the Emigration Service under

the Act of March 2, 1931, 8 U.S.C.A. 109a, and in Reynolds v. Salt River Valley Assn., 143 F. 2d 863, 868 (CCA-9) with reference to an exception to the Fair Labor Standards Act. See also same holding regarding excepting provisos in Fair Labor Standards Act in Eighth, Third and First Circuits: Fleming v. Hawkeye Button Co., 113 F. 2d 52, 57 (CCA-8); Fleming v. Kirschbaum, 124 F. 2d 567, 572 (CCA-3); Cafaf v. Gonzalez, 127 F. 2d 934 (CCA-1).

It is obvious that a workman seeking to recover under the Alaska Act would not be denied recovery unless, in addition to his unemployment, he also proved that he had no "disqualification for benefits." We have held that the burden of proving that an unemployed person, otherwise entitled to the compensation, is deprived of it by reason of falling within the exception is upon the party asserting it, here the appellees. Canadian Pac. Ry. v. United States, supra; Reynolds v. Salt River Valley Assn., supra; Schlemmer v. Buffalo, Rochester etc. Ry., 205 U.S. 1, 11.

It does not need the application of the rule of strict construction to construe the words "factory" and "establishment" placed before the words "or other premises" in Section 5 (d) of the Alaska Act as ejusdem generis with the concluding phrase and that the principle of noscitur a sociis applies. Strict construction would require such a construction as the Supreme Court made of the word "establishment" in a similar exception, supra, as the "physical place." Webster's New International Diction-

ary, Second Edition, 1940, defines the word "premises," the plural of the word "premise," as

> "Premise * * * 4. pl. Law. The property conveyed in a deed; hence, in general [emphasis ours], a piece of land or real estate; sometimes, esp. in fire-insurance papers, a building, or buildings on land; as, to lease premises; the premises insured. Sometimes loosely applied to personal property, as a vessel."

The question then is whether appellees have established their burden of proof that there was a labor "dispute which is in active progress at the factory, establishment or premises at which he is or was last employed."

The three appellee corporations, called the Canners, maintain salmon fishing and canning establishments in Alaska at Chignik, Karluk and Bristol Bay. The establishments consist of canning factories and the premises surrounding them with quarters for the fishermen and canners, fishing boats and housing for the supplies and equipment of the establishments and their employees. Appellants, over 1300 men, residing in California, had been the employees of the Canners at these establishments in the previous fishing season of 1939. They had been carried to San Francisco on the vessels chartered or owned by the Canners. Their employment, as shown by paragraph 15 of the 1939 agreement between the Canners and the appellants, began when the employees boarded the vessels bound for Alaska and terminated on arrival of the

vessels on return to San Francisco, unless leaving the employment in Alaska.[2]

Appellants were last employed under their contract for the 1939 fishing seasons in Alaska. In that contract there are 37 paragraphs with over a hundred agreements between the 1300 employees and the Canners concerning the rates of pay, overtime, food, housing, racial discrimination, and numerous other relations of the employers and employees in the canning and fishing establishments in Alaska and on board the vessels. Any one of these agreements well may have produced a labor dispute at the establishments or on the vessels or adjacent thereto. Section 5 (d) excepts the employees in all of these possible hundreds of labor disputes from the compensation of the Act for a maximum of 8 weeks. There is no merit to the contention that the exceptive section 5 (d) must be intended to include

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[2] "15. On days of arrival or departure the hour twelve (12) midnight shall be considered the basis for the computation of the payroll. On days of arrival or departure one full day shall be paid irrespective of exact time of arrival or departure with regards to the hour of 12 midnight. Wages shall commence on the day of departure and terminate on the day of return to the port of dispatching, except as herein otherwise provided.

In the event that any employee does not elect to return to original port of embarkation upon a suitable vessel by and at the direction of the Company at the termination of the season, his employment shall be considered terminated and he shall be paid all wages due him within forty-eight (48) hours, subject to all provisions of this agreement, in which event the Company will be relieved of all obligations to the employee for return transportation."

disputes other than "at" such premises to give meaning and effect to the compensation Act.

The Canners' and the Commission's brief attempt to meet appellants' contention only by an inferential treatment of Section 5 (d) as if the words "at the factory," etc. were to be stricken from their place after the words "active progress" and transposed above in the paragraph after the word "unemployment." With such striking and transposing the paragraph would appear

> "'For any week with respect to which the Commission finds that his total or partial unemployment—at the factory, establishment or other premises at which he is or was last employed—is due to a labor dispute which is in active progress ~~at the factory, establishment or other premises at which he is or was last employed~~.'"

Even in the absence of the rule of strict construction we would not be justified in so reforming the phrases of the Act. Applying the rule, it is plain that such construction is not valid.

That is to say, the premises at which the appellees must prove the dispute was in active progress are such premises as the land and "physical" structures and fishing vessels in Alaska or the Canners' vessels on the return voyage to San Francisco at which appellants were last employed.

Under the provisions of the Alaska Unemployment Compensation law appellants' claims had been heard by a referee appointed by the Commission.

At the opening of the hearing the appellants stated three contentions, of which the third we deem determinative. It is a pure question of law on the facts adduced specifically referring to Section 5 (d) and the place at which the dispute is in active progress. Appellants' three contentions there were.

"Mr. Resner [for employee appellants]. Well, I want to make a brief statement as to what our position is.

In the first place, we are contending this is not a labor dispute but simply a refusal on the part of the Alaska Packers to negotiate an agreement with the Union for the present season in Alaska affecting the Alaska Cannery Workers, Local No. 5, of San Francisco, and that is not a labor dispute; and, therefore, these men are just out of work because of the refusal to enter into this agreement and are entitled to their benefits.

We want to contend, secondly, if under any circumstances this can be considered a labor dispute it is not such labor dispute within the meaning of the Act for these reasons: This is a seasonal industry and the contracts heretofore have been signed for one year—have been negotiated and signed anew for each season. The contract of last year had expired and a new contract was to be signed for or negotiated for the coming season. There was no contract arrived at. And we contend the failure or the inability to arrive at a contract does not constitute a labor dispute.

Third, going to the Act itself, referring to Section 5 (d), we contend this is not a labor dispute which is in active progress at the factory, establishment or other premises at which the workers were last employed." (Emphasis supplied.)

The referee states the controversy actually submitted to him to have been stipulated by the parties to be confined to the "sole question" as to the dispute in progress "at" the Alaska plants, as follows:

> "Pursuant to stipulation and understanding with Counsel for the respective parties the sole question before the Referee is to determine whether or not the facts show that at the commencement of the canning season in 1940 a labor dispute was in active progress at the plants at Karluk, Chignik and in Bristol Bay being the plants operated by the Employers in 1939 and at which the members of the Union were then employed." (Emphasis supplied.)

Appellees offered no testimony before the referee as to any dispute at the ships in which any appellant was last employed. No further testimony was taken at the subsequent proceeding before the Commission or the district court. Hence the appellees have not proved appellants within any excepted dispute at the appellees' ships where they were last employed.

On the issue, so restricted, the referee decided

adversely to the contentions of appellants, (a) that there had been no labor dispute and (b) if there were it did not exist at the Alaska plants. The referee found that there had been a labor dispute between appellants and the Canners, but found that it was in active progress for but six days "with reference to the Karluk plant operated in 1939 by the Alaska Packers Association" and for but twelve days "involving operation of the Chignik plant operated by the Alaska Packers Association" and that "at the time of the commencement of the season in Bristol Bay no labor dispute was in active progress at any of the plants operated in that District in 1939." (Emphasis supplied.) He decided that the Karluk employees should be denied six days' compensation and the Chignik employees twelve days.

It is our opinion that the referee erred in holding against appellants on the question of law under consideration that the words of Section 5 (d) "at the factory, establishment or other premises" mean "with reference to " or "involving operation of" such premises.

The evidence shows that early in 1940 a dispute arose between appellants and the Canners concerning the terms of the future fishing and canning employment of appellants for the approaching 1940 season at above mentioned establishments in Alaska and on the voyages to and from the canneries there. For the purpose of this opinion we assume, but do not decide, that it continued during the eight weeks in question. The beginning and entire activity of

the dispute was "at" some unnamed place or places in San Francisco, California, and, it is claimed by the Canners, in part "at" some unnamed place in Seattle, Washington. Obviously, the dispute was not at the premises of any of the Alaska establishments.

The former Karluk and Chignik employees took no appeal to the Commission from the referee's decision. We hold that there should be at least these deductions from the claims of the Karluk and Chignik employees, deductions which they apparently were willing to accept if the controversy there ended. There was no reason for an appeal by the Bristol Bay men.

However, the controversy continued. The referee's decision was appealed to the Commission by the Canners, the Commission stating the Canners' contention before it to involve the question of the premises "at" which the dispute was in progress as follows:

> "The employers-respondents claim that the unemployment of the claimants-appellees is due to a labor dispute which was in active progress at the factory, establishment or other premises of which said claimants, and all of them, were last employed during the seasonable working period of the salmon industry of the Territory of Alaska, as set forth in said Commission's Regulation No. 10." (Emphasis supplied.)

The Commission considered the appeal on the record, made for it by the referee, of the parties' contentions and stipulation and of the evidence

taken on the stipulated issue. It thus had before it the contention of the insured men that

"Third, going to the Act itself, referring to Section 5 (d), we contend this is not a labor dispute which is in active progress at the factory, establishment or other premises at which the workers were last employed," (Emphasis supplied.)

and the stipulation of the parties confining the question to the existence of a dispute at the Alaska plants as follows:

"Pursuant to stipulation and understanding with Counsel for the respective parties the sole question before the Referee is to determine whether or not the facts show that at the commencement of the canning season in 1940 a labor dispute was in active progress at the plants at Karluk, Chignik and in Bristol Bay being the plants operated by the Employers in 1939 and at which the members of the Union were then employed." (Emphasis supplied.)

The Commission evidently agreed with the referee that since the dispute was undeniably "with reference to" or "involving operation of" the Alaska plants in the future, it was a labor dispute then existing "at" the plants within section 5 (d). Hence it confines its finding to the mere existence of the dispute during the eight weeks as follows:

"That there was an active labor dispute existing between said parties at the opening of

the season; that said dispute continued, and that paragraph (d) under Section 5, under the title 'Disqualification for Benefits' provides * * [followed by the words of Section 5 (d)]".

Obviously, a statement that a statute exists and setting forth its terms is not a finding of fact that the dispute between the appellants and the Canners was actively pursued "at" the plants in Alaska named in the stipulation. In any event, there was no evidence to support such a finding had it been made. The dispute's existence was "at" some place in California and possibly in Washington.

The appellants petitioned the district court for a review of the Commission's decision. As before the Commission, they contended in assignments (a) to (c) that there was no dispute in active progress within the meaning of the word "dispute" in Section 5 (d), and also, in assignment (d), that, assuming its existence, it was not "at" the premises of last employment as follows:

> "d. The decision is in error in that there is neither finding nor conclusion that petitioners' unemployment during the 1940 salmon canning season was 'due' to a labor dispute in active progress AT the premises where last employed (which means at the conclusion of the 1939 season), and not 'due' to other causes." (Emphasis supplied.)

The hearing before the district court was upon the record before the referee stating the position of the insured men. The district court affirmed the

Commission's decision and, in its finding 10,[3] found against appellants' claim of error "d" supra, and that a labor dispute was in active progress at the Alaska canneries. This although throughout the proceedings in the three tribunals it was admitted that whatever dispute existed began and was carried on in either California or in Washington.

This appeal followed, appellants assigning here as error, inter alia, that finding 10 "that this labor dispute was in active progress at the cannery at which they were respectively last employed," is not supported by the evidence.

Appellants' brief here, at page 3 thereof, states the question as to the premises of the existence of the dispute as it was in issue before the referee, the Commission, and the district court

> "Were appellants unemployed during the 1940 Alaska salmon season because of a labor dispute in active progress at the establishment at which they were last employed within the meaning of Section 5 (d) of the Act?"

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[3] "10. That the unemployment of claimants in the 1940 fishing and canning season, and the whole thereof, was due to a labor dispute existing between the employers, the respondent companies herein, and the claimants, and that this labor dispute was in active progress at the cannery at which they were respectively last employed, and there was an active labor dispute between the claimants and the respondent employers during the entire canning season as defined by the Commission at the respective canning plants at Chignik, Karluk and various points in Bristol Bay, Alaska." (Emphasis supplied.)

Appellants' brief later answers the question, stating in its caption of section E of its argument

> "E. There was no labor dispute in active progress at the 'factory, establishment, or other premises' where appellants were last employed."

The argument is summarized as the last times appellants worked at any of the employers' plants was in 1939. When the 1939 season ended appellants ceased to be employees of the employers. Work never started at any of the employers' Alaska plants during 1940. It follows that there was no labor dispute at the place of last employment.

The Commission's brief recognizes the challenge of the question of appellants' brief by repeating it in full. Instead of construing the words of Section 5 (d), the Commission apparently again assumes it to be sufficient that it is conceded that the dispute was "with reference to" or involved the "operation of" the plants referred to in the stipulation for the approaching season. Its brief says of the appellants' challenging question as to the place of the dispute. "We think that statement not entirely accurate, that it is a little too broad," and restates the question, omitting all reference to the premises "at" which the dispute was in active progress, as follows:

> "We think the questions to be decided in this Court are: Is there substantial evidence to support the findings of fact of the Commission and the District Court, and, can it be said as a matter of law that the Commission and the District Court were in error in finding that appellants'

unemployment was due to a labor dispute which was in active progress during the weeks for which appellants claim compensation?"

At the hearing here counsel for appellants, in obvious distress at a sudden illness of the preceding night in his family, relied upon his brief. The court itself then pressed on counsel for the appellees the question so raised by appellants' brief concerning the construction of the words of Section 5 (d). Appellees' counsel answered that they did not consider this question before us—and this with appellants' assignment of error here as to finding 10 of the district court and the issue raised by the question and argument in appellants' brief, which question is repeated in its exact words in the Commission's brief.

To summarize, the attempt of the Commission here to treat the contention that the question of the "establishment at which they were last employed" as not under consideration throughout the litigation is in direct contradiction (1) to appellants' opening contention "Third" and to the stipulation of counsel in the record before the referee upon which the entire proceeding is based; (2) to the Commission's statement, supra, that this was the contention upon which the Canners appealed to the Commission; (3) to the ground "d" of appellants' petition to the district court for review, supra; (4) to appellants' claim of error here in finding 10 of the district court, supra, holding there was such a dispute but at the Alaska canning plants, and (5) to the brief of appellants here. It seems clear to us

that the record in this regard cannot be misunderstood by anyone as showing that the Commission, either here or in the three prior hearings in the proceeding, has not had its day in court on the question of the construction of Section 5 (d) of the Alaska Act.

We hold that appellees have not maintained their burden of proof that during the first eight weeks of the 1940 employment period there was a labor dispute at the premises of the appellants' last employment. We further hold that regardless of the burden of proof, the evidence establishes affirmatively that no such dispute existed at the stipulated Alaska canning plants during appellants' admitted unemployment.

Because of the lack of appeal of the Karluk and Chignik employees from the referee's decision, a deduction must be made from the award for 12 days at Karluk and the 6 days at Chignik. There should be no deduction, because of the dispute, from the claims of the Bristol Bay employees.

Section 6 (i) of the Act, providing for this "judicial proceeding" in the district court and appeal to this court, requires that

> "Upon the determination of such judicial proceeding the Commission shall enter an order in accordance with such determination." (Emphasis supplied.)

It is our determination that the evidence shows appellants are entitled to their compensation for their unemployment in the fishing season of 1940

above considered, without deduction by reason of the labor dispute here in question, other than that for the Karluk and Chignik employees, held to be deducted by the referee as above recited; and that the Commission shall enter an order in accordance with such determination.

The judgment of the district court is reversed and the district court instructed to enter a judgment in accord with this opinion.

Reversed.

Healy, C. J., Dissenting

The majority opinion assumes (1) that the unemployment for which appellants sought compensation was due to a labor dispute, (2) that the dispute was in active progress at the commencement of the 1940 season, and (3) that it continued indefinitely thereafter. Since the whole effort on the part of appellants has been to refute one or the other of these propositions, it would seem that the assumptions should result in a decision favorable to the Commission. However, my associates have reversed the Commission on a theory volunteered by themselves, namely, that the dispute was not in progress at the right place.

The case arose under the following circumstances. For some years prior to 1940 the Union of which appellants are members had contracts with the canning companies in respect of wages and terms of employment. After the close of the 1939 season the existing agreement was cancelled so that it became

necessary to negotiate a new contract for the 1940 season. Negotiations to this end were initiated at San Francisco but no agreement was reached, with the result that the San Francisco fleet did not depart for Alaska and the seasonal enterprise was eventually abandoned. Claims having been made for unemployment benefits, the Alaska Commission at first denied them and then, on application of the claimants, appointed a referee to hear testimony. Upon the evidence taken the Commission found "that there was an active labor dispute existing between said parties at the opening of the season; that said dispute continued, and that paragraph (d) under Section 5 [of the territorial act] provides: That any individual shall be disqualified 'for any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute.'" On the basis of these findings the Commission awarded unemployment benefits, exclusive, however, of the first eight weeks following the official opening dates of the season.

Implicit in this decision is the finding that the dispute, within the intendment of the statute, was in progress at the "establishment or other premises" at which claimants are or were last employed. Appellants do not contend otherwise, nor do they claim that the decision was in this respect errone-

ous. Unless we choose to misunderstand we can not mistake the propositions of law and fact upon which review of the Commission's determination was sought. In their petition filed below appellants, as they were required to do by Section 6 (i) of the territorial act, set out their objections in extenso, the statement of them covering some seventeen pages of the printed record. The same argumentative exceptions are incorporated in identical language in appellants' brief here. Following are the grounds upon which the Commission's decision is challenged: It is claimed, first, that the dispute in respect of the terms of the seasonal contract was not a labor dispute because there was no strike or picketing and because the employer-employee relationship did not presently exist. Secondly, it is contended that, if there was a labor dispute, it had ceased to be in active progress either prior to or within a matter of days after the opening of the season, that is to say, on the "deadline" dates set by the canners for the reaching of an agreement.[1]

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[1]These asserted deadline dates were as follows: For the Karluk expedition, April 10; for the Chignik operation, April 12; for the Bristol Bay operation, May 3. Under Regulation No. 10 of the Commission the seasons for these three areas opened respectively on April 5, April 1, and May 5. On the basis of the deadline dates, the referee found that the labor dispute ceased to be in active progress five days after the opening of the Karluk operation, twelve days after the Chignik opening, and two days prior to the Bristol Bay opening. Accordingly he denied unemployment compensation for the Karluk employees for six days, for the Chignik employees twelve days,

The record shows that these were the propositions of law and fact pressed upon the Commission as well. In their initial communication addressed to the Commission under date of May 11, 1940, appellants outlined their contentions substantially as above and requested that a hearing be had before a referee to determine whether a labor dispute "actually exists." The opinion of the referee contains no hint of any contest or difference of opinion concerning the question here made the basis of decision. His findings proceed on the theory that the claimants were disqualified under the statute for such period as they actively engaged in a labor dispute affecting the seasonal operations at the plants. Appellants did not challenge the referee's findings in this particular or ask the Commission to review or modify them. In short, they have at no time contended that the law is as this Court holds it to be, nor have they raised any legal or factual issue concerning the place of the dispute.

This case is not one originally cognizable by the court. It is purely a review proceeding. The act provides [Section 6(h)] that judicial review of a decision "shall be permitted only if any party claiming to be aggrieved thereby has exhausted his administrative remedies." I think it is clear that no

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and awarded full compensation to the Bristol Bay employees.

The Commission, however, on the basis of evidence that the negotiations continued indefinitely beyond the deadline dates, found that the labor dispute continued actively after those dates, and it accordingly overturned the referee's ruling.

issue may be urged on review that was not squarely presented to the Commission. The court, no less than the parties, is foreclosed from injecting issues not so presented. Yet this court has not only done that, it has decided the spurious issue without benefit of argument on the part of counsel, and without giving the Commission an opportunity to be heard.

The Commission was not unmindful of the policy of the act. On the contrary, it called attention to the phrase "involuntary unemployment," as found in the preamble, and to a portion of the preamble which my associates have neglected to quote, namely: "The Legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this Territory, require the enactment of this measure under the police power of the Territory, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own." It was the view of the Commission that appellants were not the victims of "involuntary unemployment," that is to say they had remained idle as a matter of choice. It was thought that in light of the declared policy of the act and of the express provisions of Section 5(d) they were disqualified as beneficiaries for the specified period.

Being of the belief that the question made the basis of the majority decision is not properly before us, I refrain from discussing it beyond saying that it distorts the statutory policy and ignores the actualities of this seasonal operation. I may add that if the point had real merit it seems unlikely that

the astute and resourceful counsel who represent appellants would have failed to urge it. The findings of the Commission on the questions actually presented to it are supported by evidence, and I see no sufficient reason for disturbing the administrative decision.

[Endorsed]: Opinion and Dissenting Opinion. Filed May 15, 1945. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10425

FRANK L. ARAGON, et al.,

Appellants,

vs.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, et al.,

Appellees.

DECREE

Appeal from the District Court for the Territory of Alaska, Division Number One.

This Cause came on to be heard on the Transcript of the Record from the District Court for the Territory of Alaska, Division Number One, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that

the decree of the said District Court in this cause be, and hereby is, reversed and that this cause be, and hereby is remanded to the said District Court with instructions to enter a judgment in accordance with the opinion of this court, with costs in favor of the appellants and against the appellees.

It Is Further Ordered, Adjudged, and Decreed by this Court, that the appellants recover against the appellees for their costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered May 15, 1945. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing Transcript of Record in three volumes consisting of seven hundred and ninety four (794) pages, numbered from and including 1 to and including 794, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellees, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 22nd day of June, 1945.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this application.

FILE COPY

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1945

No. [redacted] 25

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as Members of and Constituting said Commission, and ALASKA PACKERS ASSOCIATION, a corporation, ALASKA SALMON COMPANY, a corporation, and RED SALMON CANNING COMPANY, a corporation,

Petitioners,

vs.

FRANK L. ARAGON and Other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL NO. 5 on Behalf of Applicants,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1945

No.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as Members of and Constituting said Commission, and ALASKA PACKERS ASSOCIATION, a corporation, ALASKA SALMON COMPANY, a corporation, and RED SALMON CANNING COMPANY, a corporation,

Petitioners,

vs.

FRANK L. ARAGON and Other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL NO. 5 on Behalf of Applicants,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The above named petitioners respectfully pray that a writ of certiorari issue to review the decree of the United

States Circuit Court of Appeals for the Ninth Circuit entered in the above entitled cause (R. 793), reversing the decree of the District Court of the United States for the Territory of Alaska (R. 719), which affirmed the findings and decision of the Alaska Unemployment Compensation Commission (R. 644).

OPINIONS BELOW.

The decision and opinion of the Referee appointed by the Unemployment Compensation Commission is at R. 608-643. The decision of the Commission is at R. 644-649. The opinion (R. 692-710) and findings of fact and conclusions of law (R. 711-718) of the District Court are not reported. The opinion of the Circuit Court of Appeals (R. 770-788) and the dissenting opinion of Judge Healy (R. 788-793) are reported in 149 F.(2d) 447.

JURISDICTION.

The decree of the Circuit Court of Appeals was entered May 15, 1945 (R. 793-794). Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C. 347).

STATUTE INVOLVED.

Section 5(d) of the Alaska Unemployment Compensation Law (Alaska Statutes, Chapter 4, Extraordinary Session Laws of 1937, as amended by Chapters 1 and 51, Session Laws of 1939) provides:

"*Disqualification for Benefits.* An individual shall be disqualified for benefits:

* * * * * * * *

(d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided, that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute; * * *."

Other pertinent provisions of the Alaska Act are copied in the appendix to this petition.

STATEMENT OF THE CASE.

Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company (hereinafter called "employers") operate salmon canneries in Chignik, Karluk and Bristol Bay, Alaska. The individual respondents are salmon cannery workers, hired out of San Francisco, who were employed by employers during the 1939 season (R. 646, 712). Respondent, Alaska Cannery Workers Union, Local No. 5, is the bargaining agent of the individual respondents (R. 712).

In 1939, as had been the practice in previous years (R. 713-714), employers entered into an agreement with respondent union for the employment of men in the 1939 Alaska operations (R. 714). After the close of the 1939 season this agreement was terminated (R. 714), and thereafter negotiations commenced at San Francisco looking toward the execution of an agreement covering the 1940 operations (R. 714, 165, 262-263, 610). Employers were

represented by Alaska Salmon Industry Inc., a corporation organized to handle labor negotiations of the salmon industry on the Pacific Coast (R. 260-261). The employees were represented by the union. Controversy arose. The union demanded increased wages and other working conditions more favorable than those provided in the 1939 agreement (R. 317, 614, 714). The employers, having suffered losses during the preceding year, proposed reductions (R. 243-244, 572, 615).

In Alaska the fishing and canning industry is seasonal. The seasonal periods for the three localities here involved, as fixed by the Commission pursuant to the provisions of Section 3(c) of the Alaska Act,[1] are: at Karluk from April 5 to September 5; at Chignik from April 1 to September 10, and at Bristol Bay from May 5 to August 5.[2] As negotiations continued the time approached when the expeditions would have to leave. On April 3 the employers notified the union that if operations were to be carried on at Karluk it would be necessary to reach an agreement by April 10; and if operations were to be carried on at Chignik it would be necessary t reach an agreement by April 12.

In the meantime, the union notified the employers that further negotiations (on all but certain subsidiary matters) would be carried on at Seattle (R. 321-322). The employers concurred and their representatives continued negotiations in both San Francisco and Seattle (R. 333,

[1]Appendix, p. ii.

[2]Benefit regulation No. 10, R. 199, 201. Karluk is on Kodiak Island, and Chignik on the Alaska Peninsula, both on the Pacific side of the Alaska Peninsula. Bristol Bay is on the northern side of the Peninsula, opening into the Bering Sea.

339-340). Proposals and counter proposals continued but the parties were unable to settle their dispute and the respective deadlines for Karluk and Chignik came and passed with no agreement reached.[3]

Further meetings were held in an effort to agree on terms for work at Bristol Bay (R. 372-377), and on April 26 the employers notified the union that unless agreements could be reached by May 3 no expedition to Bristol Bay could be undertaken (R. 378). As this day approached further communications were sent by the employers urging that negotiations be concluded (R. 382-393c); meetings were held; definite and unqualified written proposals were made by the employers (R. 393e, 395-491); federal officials offered their services in an attempt to bring about an agreement and participated in meetings (R. 236, 499-502). The dispute continued, however, and the deadline for Bristol Bay came and passed.

Negotiations continued at Seattle and numerous meetings were held up to May 29, when an agreement was finally reached as to workers out of Portland and Seattle, but expressly excluding workers out of San Francisco.[4]

Immediately after May 3—the last deadline date—and prior to the conclusion of the Seattle negotiations, respondents filed claims with petitioner, the Unemployment Compensation Commission of Alaska, for unemployment compensation. The Commission held respondents disqualified for benefits for the statutory period of eight weeks,

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[3]The negotiations and the matters which were the subject of the dispute are summarized in the findings of the Referee (R. 613-627), and in the opinion (R. 697-699), and findings (R. 713-716) of the District Court.

[4]R. 614-615, 627, 84-86, 90-94, 98-102, 141, 190-191, 339-341, 503.

under the provisions of Section 5(d) of the Alaska Act, supra.[5]

Respondents asked for a hearing, asserting that they were not engaged in, and their unemployment was not due to, a labor dispute (R. 3, 4-5). A hearing on these issues was granted and held before a Referee appointed by the Commission (R. 25-608).[6]

At the hearing respondents contended that no "labor dispute" within the meaning of the Act existed, because the situation was one where the employers simply refused to negotiate an agreement, or where the parties simply failed to arrive at a contract; that the employer-employee relationship terminated at the close of the 1939 season and no labor dispute can exist without the interruption by strike or work stoppage of an existing employer-employee relationship; that if a labor dispute existed, it was not "in active progress" at the factory, establishment or other premises at which the workers were last employed after the respective deadline dates, since the dispute ended on those dates; and that, finally, respondents' unemployment was not "due" to the dispute, because the employers did not negotiate in good faith but intended to, and did, abandon their operations for reasons other than the labor dispute (R. 29-30, 202-203, 204-205, 612).

The Referee found that "There is no evidence to support the Union's contention that the Employers acted in

[5]This initial determination of the Commission, provided for in Section 6(b) of the Alaska Act (Appendix, p. iii), does not appear in the record. It is referred to, among other places, in the decision by the Referee, R. 611-612, 634, and in the opinion, R. 694, and findings, R. 711-712, of the District Court.

[6]This was in accordance with Section 6(c) and (d) of the Alaska Act, Appendix, p. iv.

bad faith in the course of the negotiations" (R. 628); that "All operations contemplated by the Employers and the Union for 1940 were abandoned for the reason that a mutually satisfactory working agreement was not negotiated by the dates set by the Employers, as the 'deadline' for the respective districts" (R. 633); that "A fair consideration of all the evidence submitted leaves no escape from the conclusion that a labor dispute existed and was in active progress between the Employers and the Union up to the expiration of the dates fixed by the Employers for the consummation of the working agreements for the respective plants" (R. 638); but that "the labor dispute ceased to be in active progress," as to the three districts, upon the expiration of the respective "deadline dates," since, upon those dates, "the dispute which had raged between [the Employers] and the Union" came to an end (R. 640). Accordingly, the Referee ordered that compensation be denied from the opening of the season up to the respective deadline dates, but be allowed for the balance of the season (R. 642-643).

Respondents, satisfied with this decision, did not appeal (R. 645). The employers appealed to the full Commission (R. 645). The Commission held that a labor dispute existed and continued, and that respondents' unemployment was due to that dispute (R. 644-649). Compensation accordingly was allowed, to commence after the expiration of eight weeks (R. 649).

The respondents petitioned for review in the District Court in accordance with the provisions of section 6(h) and (i) of the Alaska Act,[7] repeating the contentions they

[7]Appendix, pp. v-vi.

had made before the Referee. The District Court overruled these contentions and affirmed the findings and conclusions of the Commission (R. 692-718).

Respondents appealed, raising identically the same contentions.[8]

The Circuit Court of Appeals gave no consideration to any point raised and passed upon in the tribunals below or raised in that court. Instead, it reversed the judgment upon a volunteered ground. It pointed to the statutory language that "an individual shall be disqualified for benefits * * * for any week * * * that his * * * unemployment is due to a labor dispute which is in active progress at the factory * * * at which he is or was last employed," and held that since the dispute here was "at" San Francisco and Seattle, and not physically "at" the Alaska plants, the disqualification did not apply (R. 774-777, 779, 780-781, 787).

The Circuit Court of Appeals went further. It devoted more than nine pages of its opinion (R. 778-787) to a statement that the point upon which it decided the case was in fact raised and considered "throughout the litigation" (R. 786).

Judge Healy dissented (R. 788-793). He pointed out that the ground of decision was "volunteered" by the majority of the court (R. 788); that "Unless we choose to misunderstand we can not mistake the propositions of law and fact upon which review of the Commission's deter-

[8]The assignment of errors in the Circuit Court of Appeals (R. 722-745) except for minor and unsubstantial differences, is a copy of the petition for review in the District Court (R. 650-672).

mination was sought" (R. 790). He expressed the further views (R. 791-793):

> "This case is not one originally cognizable by the court. It is purely a review proceeding. The act provides [Section 6(h)] that judicial review of a decision 'shall be permitted only if any party claiming to be aggrieved thereby has exhausted his administrative remedies.' I think it is clear that no issue may be urged on review that was not squarely presented to the Commission. The court, no less than the parties, is foreclosed from injecting issues not so presented. Yet this court has not only done that, it has decided the spurious issue without benefit of argument on the part of counsel, and without giving the Commission an opportunity to be heard.
>
> * * * * * * *
>
> Being of the belief that the question made the basis of the majority decision is not properly before us, I refrain from discussing it beyond saying that it distorts the statutory policy and ignores the actualities of this seasonal operation. * * * The findings of the Commission on the questions actually presented to it are supported by evidence, and I see no sufficient reason for disturbing the administrative decision."

QUESTIONS PRESENTED.

1. Did the Circuit Court of Appeals err in holding that the question decided by it was raised before and considered by the Commission and the District Court, and was raised in the Circuit Court of Appeals?

2. Did the Circuit Court of Appeals, in stating contrary to the fact that said question was raised before and con-

sidered by the Commission and the District Court, and was raised in the Circuit Court of Appeals, so far depart from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision?

3. Did the Circuit Court of Appeals err in reversing the decree of the District Court and the findings and decision of the Alaska Unemployment Compensation Commission upon a ground not raised in, or considered by, the Commission or the District Court?

4. Did the Circuit Court of Appeals, in reversing the findings and decision of the Commission upon a ground not raised in or considered by the Commission, err in that it failed to give effect to the requirement of the Alaska Act, and of the general law, that parties shall exhaust their administrative remedies before resort to the court, and to the requirements of the Alaska Act that the determination whether claims are properly payable under the Act shall be first made by the Commission, and that the hearing in court shall be confined to "review" of the Commission's decision?

5. Did the Circuit Court of Appeals, in reversing the findings and decision of the Commission upon the ground that the dispute was not "at the factory, establishment or other premises" at which respondents were last employed, err in that it failed to give effect to the rule that an administrative finding, if it has warrant in the facts of record and a reasonable basis in law, is conclusive upon the court on review?

6. Did the Circuit Court of Appeals err in failing to hold that the Commission's findings were supported by the evidence and have a reasonable basis in law and are, therefore, conclusive upon the court on review?

7. Did the Circuit Court of Appeals err in holding that the disqualification provided in Section 5(d) of the Alaska Act is not applicable unless the labor dispute physically takes place at the particular factory, establishment or other premises at which the particular claimant was last employed?

8. Did the Circuit Court of Appeals err in failing to affirm the decision of the District Court which sustained the findings and decision of the Commission?

REASONS FOR GRANTING THE WRIT.

1. **IN MISREPRESENTING THE RECORD AND HOLDING, CONTRARY TO THE FACT, THAT THE POINT UPON WHICH IT DECIDED THE CASE HAD BEEN RAISED IN AND CONSIDERED BY THE COMMISSION AND BY THE DISTRICT COURT, AND HAD BEEN RAISED IN THE CIRCUIT COURT OF APPEALS, THE COURT BELOW SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER.**

The Circuit Court of Appeals, at R. 777-787, holds that the question as to the place of dispute was raised and considered throughout the proceedings. The court refers to and quotes excerpts from the record and from the briefs of the parties filed in the Circuit Court of Appeals.

The Record.

In the footnote we supply the record references for each of the quotations appearing in the opinion.[9] In each of these quotations the phrase "at the factory," etc., is quoted, and the word "at" is emphasized by italics, solid capitals, or quotation marks. This Court, upon examination of the record, will see that the quotations are simply of statements where the statutory language happens to have been used in the assertion of one or another of the questions which were in fact raised, namely, whether a "labor dispute" existed, whether it was "in active progress," and whether respondents' unemployment was "due" to that dispute.[10]

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[9]The quotation at R. 778-779 appears at R. 29-30.
The quotation at R. 779 appears at R. 635.
The quotations at R. 780 appear at R. 642.
The quotation at R. 781 appears at R. 645-646.
The first quotation at R. 782 appears at R. 30.
The second quotation at R. 782 appears at R. 635.
The quotation at R. 782-783 appears at R. 648.
The quotation at R. 783 appears at R. 666.
The quotation in the footnote at R. 784 appears at R. 716.

[10]Respondents' contentions before the Commission, the District Court and the Circuit Court of Appeals cannot be misunderstood. They are set forth in their petition for review of the Commission's decision, at R. 650-672, the assignment of errors in the court below being but a repetition, with unsubstantial modifications, of that petition.

Not only is the point decided by the Circuit Court of Appeals not raised in those contentions, but over and over respondents' statements affirmatively show that the place of dispute was not in issue; that, if a dispute existed, they admitted it existed "at" Karluk, "at" Chignik, and "at" Bristol Bay. For example, in assignment of error V respondents asserted (R. 725):

> "Admitting for the sake of argument that a labor dispute existed * * * it did not exist and was not in active progress at the Chignik, Karluk and Bristol Bay canneries during the entire season * * * but said labor dispute was in active progress at Chignik only from April 1, 1940, to April 12, 1940, and terminated on April 12, 1940, and was not in active progress at Chignik during the balance of the 1940 season;

We give one illustration typical of every other quotation in the opinion. At R. 783 the court says:

> "As before the Commission, they [respondents] contended in assignments (a) to (c) that there was no dispute in active progress within the meaning of the word 'dispute' in Section 5 (d), and also, in assignment (d), that, assuming its existence, it was not 'at' the premises of last employment as follows:
>
> > 'd. The decision is in error in that there is neither finding nor conclusion that petitioners' unemployment during the 1940 salmon canning season was "due" to a labor dispute *in active progress AT the premises where last employed (which means at the conclusion of the 1939 season), and not "due" to other causes.'* (Emphasis supplied.)"

The quotation is from R. 666. An examination of that page and the one following shows that the quoted assignment has no reference whatsoever to the place of dispute. The point urged was that the employers intended to curtail or abandon their operations for reasons other than the labor dispute, and that, therefore, respondents' unemployment was not "due" to the dispute (R. 666-667). This is so clear as not reasonably to be susceptible of misunderstanding.

Briefs in the Circuit Court of Appeals.

The briefs of the parties are quoted and referred to in the opinion of the court below at R. 777, 784, 785. Three

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that said labor dispute was in active progress at Karluk only from April 5, 1940, to April 10, 1940, * * *; that at the commencement of the season at Bristol Bay no labor dispute was in active progress, and no labor dispute existed with respect to the Bristol Bay operations at any time during the 1940 season.'"

briefs were filed, one by respondents, one by the Commission, and one by the employers. Of petitioners' briefs the court says (R. 777): "The Canners' and the Commission's brief attempt to meet appellants' contention only by an inferential treatment of Section 5(d) as if the words 'at the factory,' etc. were to be stricken * * *."

Neither the employers' nor the Commission's brief met any contention as to the place of dispute, inferentially or otherwise. No such contention was raised or in the mind of any party.

The court below also quotes from respondents' brief, stating that that brief raised the "challenging question as to the place of the dispute" (R. 785). No such question was raised. Like the quotations from the record, the quotations from respondents' brief are simply of statements where the statutory language happens to have been used in connection with respondents' contentions above set forth. The court below further says (R. 785) that the "Commission's brief recognizes the challenge of the question of appellants' brief," and that the Commission's "brief says of the appellants' challenging question as to the place of dispute" etc. The Commission's brief did not recognize the challenge of, or say anything concerning, any question as to the place of dispute. No such question was raised in respondents' brief.

Briefs filed in a Circuit Court of Appeals form no part of the record. In this particular situation, however, we feel that this Court will wish to have available copies of the briefs of the parties filed in the Circuit Court of Appeals. We are lodging one copy of each of the briefs filed by petitioners in the court below with the Clerk of

this Court.[11] We have no extra copy of respondents' brief. We suggest that, unless they agree with us that the point decided by the Circuit Court of Appeals was not raised in their brief, they will wish to lodge a copy of their brief with the Clerk of this Court.

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2. IN REVERSING THE FINDINGS AND DECISION OF THE COMMISSION UPON A POINT NOT RAISED IN OR CONSIDERED BY THE COMMISSION OR BY THE DISTRICT COURT, AND NOT RAISED IN THE CIRCUIT COURT OF APPEALS, THE DECISION OF THE COURT BELOW IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

The Alaska Act imposes upon the Commission the administration of the Act and the determination of the validity of claims presented thereunder, subject only to "review" in the courts after administrative remedies have been exhausted. The action of the court below denies the Commission the opportunity to make any determination, initial or otherwise, of the important point decided. The decree remands with direction to enter a final order. The Commission is wholly deprived of the power, in a matter of exceptional importance, to exercise its function of determining the appropriate application of the Act.

See

Phelps Dodge Corp. v. Labor Board (1941) 313 U. S. 177, 196-197;

Regal Knitwear Co. v. Board (1945) 324 U. S. 9, 13.

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[11] Additional copies are not available but will be printed if this Court so directs.

In the *Phelps Dodge* case this Court said:

> "The administrative process will best be vindicated by clarity in its exercise. Since Congress has defined the authority of the Board and the procedure by which it must be asserted and has charged the federal courts with the duty of reviewing the Board's orders (§ 10(e) and (f)), it will avoid needless litigation and make for effective and expeditious enforcement of the Board's order to require the Board to disclose the basis of its order. We do not intend to enter the province that belongs to the Board, nor do we do so. All we ask of the Board is to give clear indication that it has exercised the discretion with which Congress has empowered it. This is to affirm most emphatically the authority of the Board."

The Alaska Act further provides that the Commission shall determine the manner in which disputed claims shall be presented. Its rule in this regard is clear from its decision herein. It held that since respondents took no objection or appeal from the findings of the Referee, they were bound by his ruling (R. 645). The same rule applies to the point made the basis of the decision below. The entire administrative scheme is frustrated if questions as to the application of the statute to particular facts are taken from the hands of the expert administrative tribunal charged with its administration. In usurping the administrative function of the Commission, the decision of the Circuit Court of Appeals is in conflict, not only with the decisions of this Court stating accepted limitations upon judicial review, e.g.,

Helvering v. Wood (1940) 309 U. S. 344, 348-349;
Denver Stock Yard Co. v. U. S. (1938) 304 U. S. 470, 484-485; and

U. S. v. Northern Pacific Ry. Co., 311 U. S. 317, 370-372,

but also with the decisions of this Court cited in the next subdivision of this petition.

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3. IN REVERSING THE FINDING OF THE COMMISSION THAT RESPONDENTS WERE UNEMPLOYED DUE TO A LABOR DISPUTE IN ACTIVE PROGRESS AT THE EMPLOYERS' PLANTS, SUCH FINDING BEING SUPPORTED BY THE EVIDENCE AND HAVING A REASONABLE BASIS IN LAW, THE DECISION OF THE COURT BELOW IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

Whether or not it be assumed that the question as to the meaning and application of the Alaska Act was presented to and decided by the Commission, the decision of the court below in either event is clearly erroneous and in conflict with applicable decisions of this Court. The Commission held that the facts here constituted a "labor dispute" "in active progress" "at the factory * * * at which [respondents were] last employed." In overturning this administrative finding the court exceeded its province.

The applicable principles have been established by the decisions of this Court:

Board v. Hearst Publications (1944) 322 U. S. 111, 130, 132;

Gray v. Powell (1941) 314 U. S. 402, 411-413;

Rochester Tel. Corp. v. U. S. (1939) 307 U. S. 125, 144-146;

South Chicago Co. v. Bassett (1940) 309 U. S. 251, 257-258.

In the *Hearst* case the administrative tribunal had determined that newsboys were "employees" within the meaning of the National Labor Relations Act. This finding having "warrant in the record" and a "reasonable basis in law" was held to be conclusive. The Court pointed out that the determination of such questions belongs to the usual administrative routine of the Board, and that (322 U. S. 131):

> "• • • where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited. Like the commissioner's determination under the Longshoremen's & Harbor Workers' Act, that a man is not a 'member of a crew' • • • or that he was injured 'in the course of his employment' • • • and the Federal Communications Commission's determination that one company is under the 'control' of another • • •, the Board's determination that specified persons are 'employees' under this Act is to be accepted if it has 'warrant in the record' and a reasonable basis in law."

In the *Rochester Telephone* case the Commission had found that one company was under the "control" of another. This Court pointed out that a finding whether control exists depends upon the facts of each case; that (307 U. S. 145-146):

> "So long as there is warrant in the record for the judgment of the expert body it must stand • • • 'The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.'"

In the *South Chicago* case the question was whether the employee was a member of a "crew." The Court held that the determination of that question had been confided in the Deputy Commissioner. It rejected the contention that the question was purely one of law upon undisputed facts, pointing out that "The word 'crew' does not have an absolutely unvarying legal significance."

In *Gray v. Powell* the question was whether one of the parties was a "producer" of coal within the meaning of the statute. This Court held that the determination of that issue had been vested by the Congress in the administrative body, and that its determination was conclusive upon the courts so long as it rested upon a rational basis (314 U. S., 411-413):

> "Such a determination as is here involved belongs to the usual administrative routine. Congress, which could have legislated specifically as to the individual exemptions from the code, found it more efficient to delegate that function to those whose experience in a particular field gave promise of a better informed, more equitable adjustment of the conflicting interests of price stabilization upon the one hand and producer consumption upon the other. * * *
>
> Where as here a determination has been left to an administrative body, this delegation will be respected and the administrative conclusion left untouched. Certainly a finding on Congressional reference that an admittedly constitutional act is applicable to a particular situation does not require such further scrutiny. Although we have here no dispute as to the evidentiary facts, that does not permit a court to substitute its judgment for that of the Director. * * * It is not the province of a court to absorb the administrative

functions to such an extent that the executive or legislative agencies become mere fact finding bodies deprived of the advantages of prompt and definite action.

* * * To determine upon which side of the median line the particular instance falls calls for the expert, experienced judgment of those familiar with the industry. Unless we can say that a set of circumstances deemed by the Commission to bring them within the concept 'producer' is so unrelated to the tasks entrusted by Congress to the Commission as in effect to deny a sensible exercise of judgment, it is the Court's duty to leave the Commission's judgment undisturbed."

In the case at bar the legislature specifically clothed the Commission with the duty of determining the facts and the application of the statute to those facts. Section 5(d) provides for disqualification

> "For any week with respect to which *the Commission finds* that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; * * *."

The question whether a particular controversy constitutes a labor dispute, and whether that dispute is in active progress, and whether that dispute is at the factory of last employment, are all questions of the same character as whether a party is an employee, or a member of a crew, or a producer, or subject to "control." Whether they be called questions of fact, or mixed questions of law and fact, or questions relating to the application of broad statutory terms to particular facts—the established rule is

that the administrative determination is binding if it has support in the evidence and a basis in reason.[12]

The phrase "dispute * * * in active progress at the factory" does not have an "absolutely unvarying legal significance."[13] A dispute may be in progress "at" a plant if negotiations are in progress on the actual plant premises, but it may also be in progress "at" a plant if the work stoppage arising out of the dispute continues at the plant while negotiations to end it are being conducted across the street, or at any other place at the convenience of the negotiators. It may be in progress "at" all of several plants owned by the same employer although active disputation takes place only at one,[14] or it may be in progress "at" all of several plants owned by several employers while negotiations are conducted by common bargaining agents at one of the plants or elsewhere. All of these are familiar situations.

As pointed out by Judge Healy, the construction given the statute by the court below "distorts the statutory policy and ignores the actualities of this seasonal operation" (R. 792). Men for the Alaska fishing operations are hired each year at San Francisco, Portland and Seattle.

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[12]State decisions construing statutes identical in substance to the Alaska Act are in accord.

In *Johnson v. Pratt* (1942) 200 S.C. 315, 20 S.E. (2d) 865, 870-881, the court held that the question whether a labor dispute existed, and whether claimants' unemployment was directly "due" to it, were questions of fact as to which the Commission's determination, if supported, was conclusive.

A like case is *Ex parte Pesnell* (1940) 240 Ala. 457, 199 So. 726, certiorari denied, 313 U.S. 590.

[13]*South Chicago Co. v. Bassett* (1940) 309 U.S. 251, 258, supra.

[14]See: *Chrysler Corporation v. Smith* (1941) 297 Mich. 438, 298 N.W. 87.

They return to these cities each year and live there. Many unions are involved in the whole Alaskan operations. Their headquarters, their officers, are in San Francisco, Portland and Seattle. For more than forty years—since prior to 1901—negotiations concerning working conditions for the Alaskan fishing and canning season have been carried on every year at San Francisco; for some of these years at Seattle. Agreements must be reached before the opening of the season. Negotiations must occur when it would be impracticable, if not impossible, to be in Alaska. It is a matter of judicial knowledge that Bristol Bay is ice-bound during the winter; inaccessible by boat. Except for planes which now fly in on skis, the only way to reach the plants in winter is by dog team through the arctic night. Karluk and Chignik on the southern side of the Alaska Peninsula can be reached by boat, but it would be nearly as difficult to arrange for off-season labor negotiations there as at Bristol Bay. Further, under the decision of the Circuit Court of Appeals it would be necessary, if one union were the bargaining agent for all of the men, to go from plant to plant and re-enact the dispute before the statutory disqualification would apply.

The decision not only ignores these actualities of Alaskan seasonal operations, but also the actualities and history of American labor relations in general. Unions frequently and fairly demand "neutral grounds" for the settlement of disputes. Numerous negotiations—certainly many of the most important—are conducted by representatives of all workers in many widely-separated plants under different managements. The negotiations between the United Mine Workers and the coal operators in 1939,

carried on by John L. Lewis and others at New York and Washington and referred to in the decisions hereinafter cited,[15] are familiar examples.

The Commission applied the Alaska Act in a rational manner to undisputed facts. The Circuit Court of Appeals in setting the decision aside exceeded its province in a manner in conflict with the decisions of this Court.

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4. THE RULING OF THE COURT BELOW THAT THE DISQUALIFICATION PROVIDED IN SECTION 5(d) OF THE ALASKA ACT IS NOT APPLICABLE UNLESS THE LABOR DISPUTE PHYSICALLY TAKES PLACE AT THE PARTICULAR FACTORY AT WHICH THE PARTICULAR CLAIMANT WAS LAST EMPLOYED IS IN CONFLICT WITH DECISIONS OF THE SUPREME COURTS OF TENNESSEE, INDIANA, WEST VIRGINIA, IOWA, COLORADO AND ALABAMA, AND WITH THE DECISIONS OF CIRCUIT COURTS IN OREGON AND WEST VIRGINIA.

So far as our research discloses, the exact point has been raised in only one case, *Koski, et al. v. UCC, et al.*, C.C.H. Unemployment Insurance Service, Oregon, par. 8046. Of it, the court said:

> "There remains the question as to whether this labor dispute is one which under the statute constitutes a disqualification barring these claimants from unemployment compensation. Counsel for plaintiff urges that it is not. Counsel's theory is that Section 126-705, O.C.L.A., excludes this conclusion by the provision that the labor dispute must be one 'in active progress at the factory, establishment or other premises' in or on which the employee works; and counsel

[15] Page 24, infra.

argues that any dispute which existed did not take place upon the premises of these employers. This argument cannot be taken seriously by the Court, and evidently was not by the Commission. If the interpretation given by counsel is to be applied to the statute, it would result in the admittedly ridiculous situation where any kind of labor dispute could be carried on without disqualifying the men from getting unemployment compensation, provided only the disputants kept off the real property of the employer. This could not have been the intention of the Legislature, and in the opinion of this Court the statute must be interpreted as meaning a dispute which affects the wages, hours or conditions of labor at the factory, establishment or other premises involved, regardless of where the disputing is done."

The decision of the court below is also in conflict with *Block Coal & Coke Co. v. United Mine Workers, Etc.* (1941) 177 Tenn. 364, 148 S.W. (2d) 364; *Miners in General Group v. Hix* (W. Va. Sup. Ct., 1941) 17 S.F (2d) 810; *Dallas Fuel Co. v. Horne* (1941) 230 Iowa, 1148, 300 N.W. 303; *Department of Industrial Relations v. Pesnell* (1940) 29 Ala. App. 528, 199 So. 720 (affirmed, *Ex parte Pesnell* (1940) 240 Ala. 457, 199 So. 726, cert. den., 313 U. S. 590); *Sandoval v. Industrial Commission* (1942) 110 Colo. 108, 130 P. (2d) 930; *Walter Bledsoe Coal Co. v. Review Board, Etc.* (Ind. Sup. Ct., 1943) 46 N.E. (2d) 477; *Moore et al. v. Board of Review* (C.C., W. Va., 1940) C.C.H. Unemployment Insurance Service (W. Va.), par. 1980.01.

All of these cases arose out of the dispute in 1939 between United Mine Workers of America and the operators of coal mines in the various states. In each case there was

a stoppage of work pending negotiation of contracts. Negotiations were carried on by John L. Lewis and his associates, and by the representatives of the operators, in New York City and Washington, D. C. In all cases claims for unemployment compensation were filed and ultimately denied under the labor dispute disqualification provisions of the several acts—all identical with the provision in the Alaska Act. While the exact point decided by the court below was not raised by any of the employees,[16] its decision was necessarily involved since the negotiations occurred "at" New York and Washington and not "at" the various mines. The construction given to the statutory provision by the courts in each of these cases is illustrated by the following quotation from the *Block Coal & Coke Co.* case (148 S.W. (2d), p. 366):

> "The dispute was wholly with respect to matters relating to such labor, and we are unable to reach any other conclusion than that a labor dispute was in active progress throughout the period here involved touching the continuation or resumption of work at the premises at which each of these claimants 'was last employed.'"

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5. THE QUESTION PRESENTED IS ONE OF IMPORTANCE WHICH SHOULD BE DECIDED BY THIS COURT.

The decision below is important to the Unemployment Compensation Commission of Alaska and to the Territory of Alaska. As the Referee pointed out (R. 642):

> "The Referee is conscious of the fact that his conclusion, if sustained by the Commission or the Court,

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[16] We suggest this point was not raised because of its unsubstantial character.

will mean the practical exhaustion of the Unemployment Compensation fund of the Territory. * * *."

Beyond this, the decision if unreversed will seriously handicap all labor negotiations relating to Alaskan industries, particularly seasonal industries.[17] Employers will be reluctant to negotiate seasonal contracts at any place but at their respective plants in Alaska, notwithstanding the fact that during the months when negotiations must take place the plants are closed and virtually inaccessible, and the workers and employers are in the United States. This burden, great on the employers, will fall even more heavily on the workers. The creation of such a situation is unwarranted and defeats the purposes of the Act.

But the decision has more than local significance. It is a precedent of nationwide application in the important field of labor relations, and in a portion of that field closely integrated with federal law. Under the sponsorship of the Congress, through Title IX of the Social Security Act (49 Stat. 620, 639),[18] forty-three states, the District of Columbia, and the Territory of Hawaii have enacted unemployment compensation acts containing labor dispute disqualification provisions identical to the provisions of Section 5(d) of the Alaska Act here involved.[19] The decision below—bear-

[17]These include not only the fishing and canning operations—the largest single industry in Alaska, but also among others, the important placer mining industry.

[18]Now incorporated in the Internal Revenue Code, 26 U.S.C. 1600-1611.

[19]Alabama Unemployment Compensation Law sec. 214A (General Acts Alabama 1935, pp. 950, 958, as amended by General Acts Alabama 1943, p. 291).

Employment Security Act of Arizona, sec. 56-1005 (d) (Ch. 13, Session Laws of Arizona 1936, 1st Spec. Sess., 53, 63, as amended by Ch. 68, Session Laws 1937, p. 276).

ing the authority of the only Federal Circuit Court of Appeals ever likely to pass upon the point—is a direct precedent as to the construction of all of these statutes. The ad-

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Arkansas Employment Security Act sec. 5 (d) (Act 155, Acts of Arkansas 1937, pp. 529, 542, as amended by Act 391, Acts 1941, p. 1109).

California Unemployment Insurance Act, sec. 56 (Ch. 352 Statutes of California 1935, pp. 1226, 1238, as amended by Ch. 7 Statutes of California 1939, p. 8, (Deering's California Gen. Laws, Act 8780 d)).

Connecticut Unemployment Compensation Law sec. 1339c (b) (3) (Ch. 280a, 1937 Supp. To Conn. Gen. Stats. pp. 444, 453, as amended by Ch. 280a, 1941 Supp. to Conn. Gen. Stats. p. 386).

Delaware Unemployment Compensation Law sec. 5 (d) (Ch. 258, Laws of Delaware 1937, pp. 742, 754).

District of Columbia Unemployment Compensation Act sec. 10 (f) (49 United States Statutes at Large, pp. 946, 950, as amended by 57 United States Statutes at Large, p. 115).

Florida Unemployment Compensation Law sec. 443.06 (4) (Ch. 18402, Laws of Florida 1937, pp. 1292, 1303, as amended by Ch. 443, Florida Statutes 1941, § 443.06 (4)).

Georgia Unemployment Compensation Law sec. 5 (d) (Act No. 335, Georgia Laws 1937, pp. 806, 813).

Illinois Unemployment Compensation Act sec. 7 (d) (Laws of Illinois Sixtieth Gen. Assembly 1937, pp. 571, 580).

Indiana Employment Security Act, sec. 7 (f) (3) (Ch. 4, Indiana Acts 1936 Special Session pp. 80, 95, as amended by Ch. 286, Acts 1943, p. 840).

Iowa Employment Security Law sec. 1551.11 (D) (Ch. 102, Iowa Laws of 1937, pp. 144, 148. Code of Iowa 1939, § 1551.11 (D)).

Kansas Unemployment Compensation Law sec. 44-706 (d) (Ch. 255, Laws of Kansas 1937, pp. 360, 366, as amended by Ch. 264, Laws of Kansas 1941, p. 405).

Kentucky Unemployment Compensation Law sec. 341.360 (Ch. 50, Kentucky Acts 1938, pp. 298, 330, as amended by Kentucky Revised Statutes 1942, §341.360).

Louisiana Unemployment Compensation Law sec. 4 (d) (Act No. 97, Acts State of Louisiana 1936, pp. 326, 332, as amended by Act No. 160, Acts 1944, p. 450).

Maine Unemployment Compensation Law sec. 5 (d) (Ch. 192, Laws of Maine 1937 (Spec. Sess. 1936) pp. 1, 5).

Maryland Unemployment Compensation Law sec. 5 (d) (Ch. 1, Laws of Maryland Extraordinary Session 1936, pp. 3, 8, as amended by Ch. 278, Laws 1939, p. 493).

Massachusetts Employment Security Law sec. 25 (b) (Ch. 151A of General Laws, created by Ch. 479 Acts Massa-

ministration of each of these acts is financed in part by the Federal Government and is a matter of direct concern to the Federal Government. If the decision of the Circuit

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chusetts 1935, pp. 637, 644, as amended by Ch. 685, Acts 1941, p. 1010).

Michigan Unemployment Compensation Law sec. 29 (c) (Public Act No. 1, Michigan Extra Session 1936, pp. 3, 13, as amended by Public Acts 1943—No. 246, p. 453).

Minnesota Employment and Security Law sec. 268.09 sub. 1 (6) (Ch. 2, Laws of Minnesota 1936 Extra Session, pp. 6, 19, as amended by Ch. 650, Laws 1943, p. 1058).

Mississippi Unemployment Compensation Law sec. 7379 (e) (Ch. 176, General Laws of Mississippi, 1936, pp. 279, 284, as amended by Ch. 288, General Laws 1944, p. 510 (1944 Supp. to Mississippi Code 1942, § 7379 (e))).

Missouri Unemployment Compensation Law sec. 9431 (II) (Laws of Missouri 1937, pp. 574, 591, as amended by Laws 1941, p. 611).

Montana Unemployment Compensation Law sec. 5 (d) (Ch. 137, Laws of Montana 1937, pp. 424, 429).

Nebraska Placement and Unemployment Insurance Law sec. 48-628. (d) (Ch. 108, Laws of Nebraska 1937, pp. 369, 378, as amended by C. S. Supp. Nebr. 1941, § 48-705).

Nevada Unemployment Compensation Law sec. 5 (d) (Ch. 129, Statutes of Nevada 1937, pp. 262, 270, as amended by Ch. 175, Statutes 1943, p. 247).

New Hampshire Unemployment Compensation Law sec. 4 (D) (Ch. 99, N. H. Laws 1935, pp. 154, 164, as amended by Ch. 103, N. H. Laws 1941, p. 134).

New Jersey Unemployment Compensation Law sec. 43:21-5 (d) (Ch. 270, Laws of New Jersey 1936, pp. 1045, 1049).

New Mexico Unemployment Compensation Law sec. 57-805 (d) (Ch. 1, Laws of New Mexico 1937 (Spec. Sess. 1936) pp. 1, 5, as amended by Ch. 103, Laws 1943, p. 185).

New York Unemployment Insurance Law sec. 592 (1) (Ch. 468, Laws of New York 1935, pp. 1028, 1032, as amended by Ch. 705, Laws 1944, p. 1532).

North Carolina Unemployment Compensation Law sec. 96-14 (d) (Ch. 1, Public Laws of North Carolina Extra Session 1936, pp. 1, 4).

North Dakota Unemployment Compensation Law sec. 52-0602 (4) (Ch. 232, Laws of North Dakota 1937, pp. 414, 426, as amended by Ch. 261, Laws 1941, p. 457).

Ohio Unemployment Compensation Law sec. 1345-6 (d) (H.B. 608, Laws of Ohio 1935 and 1936 (1st Sp. Sess. 1935) pp. 286, 293, as amended by Laws of Ohio 1943, p. 683 (Ohio General Code, sec. 1345-6 (d))).

Court of Appeals is allowed to stand it will be a precedent impairing labor relations and impeding the settlement of labor disputes throughout the nation. Employers and em-

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Oregon Unemployment Compensations Law sec. 126-705 (d) (Ch. 70, Oregon Laws Special Session 1935, pp. 150, 155, as amended by Ch. 515, Laws 1939, p. 1072).

Rhode Island Unemployment Compensation Law sec. 7 (4) (Ch. 2333, Public Laws of R. I. 1936, pp. 829, 848, as amended by Ch. 2556, Public Laws, 1937, p. 283).

South Carolina Unemployment Compensation Law sec. 7035-85 (d) (Act No. 946, Acts S. C. 1936, pp. 1716, 1721, as amended by Act No. 316, Acts 1939, p. 492).

South Dakota Unemployment Compensation Law sec. 17.0830 (4) (Ch. Session Laws of South Dakota 1937, pp. 4, 7, as amended by Ch. 84, Session Laws 1943, p. 90).

Tennessee Unemployment Compensation Law sec. 5 (d) (Ch. 1, Public Acts Tennessee Extraordinary Session 1936, pp. 19, 25, as amended by Ch. 131, Public Acts 1939, p. 511).

Texas Unemployment Compensation Law sec. 5 (d) (Ch. 482, General and Special Laws Texas Third Called Session 1936, pp. 1993, 1998, as amended by Ch. 2, General Laws 1939, p. 438).

Vermont Unemployment Compensation Law sec. 5 (d) (Act No. 1, Laws of Vermont Second Special Session 1936, pp. 496, 502).

Virginia Unemployment Compensation Act sec. 5 (d) (Ch. 1, Acts of Assembly Virginia Extra Session 1936, pp. 3, 10, as amended by Ch. 317, Acts of Assembly 1942, p. 459).

Washington Unemployment Compensation Act sec. 5 (f) (Ch. 162, Laws of Washington 1937, pp. 574, 581, as amended by Ch. 253, Laws 1941, p. 878).

West Virginia Unemployment Compensation Law sec. 4 (4) (Ch. 1, Acts of West Virginia Second Extraordinary Session 1936, pp. 1, 24, as amended by Ch. ____ (SB 182), Acts 1945).

Wisconsin Unemployment Reserves and Compensation Act sec. 108.04 (5) (a) (Ch. 20, Laws of Wisconsin Special Session 1931, pp. 57, 63, as amended by Ch. 192, Laws 1935, p. 292).

Wyoming Employment Security Law sec. 5 (B) (II) (Ch. 113, Session Laws of Wyoming 1937, pp. 183, 189, as amended by Ch. 96 Laws 1941, p. 99).

Hawaii Unemployment Compensation Law sec. 5 (d) (Ch. 260A, Laws of Hawaii 1937, pp. 293, 303, as amended by Ch. 260A, Session Laws 1941, p. 377).

In the Alabama, California, District of Columbia, Kentucky, Michigan, Missouri, New York, Rhode Island, South Carolina and Wisconsin statutes the phrase reads, "in the factory," etc. In the remaining statutes the phrase reads, "at the factory."

ployees will be seriously handicapped in their efforts to negotiate on neutral ground, or at points of common convenience, or at one common place where disputes involve more than one plant.

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6. THE DECISION OF THE COMMISSION AND OF THE DISTRICT COURT AFFIRMING IT ARE CORRECT.

What we already have said demonstrates, we submit, that the Commission's decision on the points raised before it is supported by the evidence and has a reasonable basis in law. It is therefore conclusive. Respondents' contentions are all considered and answered in the thorough opinion of the District Court (R. 692). That opinion is in accord with all pertinent decisions under comparable statutes.[20]

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[20]In addition to the cases cited in the opinion of the District Court, namely:

Miners in General Group v. Hix (W. Va. Sup. Ct., 1941) 17 S.E. (2d) 810;

Department of Industrial Relations v. Pesnell (1940) 29 Ala. App. 528, 199 So. 720;

Ex parte Pesnell (1941) 240 Ala. 457, 199 So. 726 (cert. den., 313 U.S. 590);

Barnes v. Hall (1941) 285 Ky. 160, 146 S.W. (2d) 929;

Block Coal & Coke Co. v. United Mine Workers, Etc. (1941) 177 Tenn. 364, 148 S.W. (2d) 364;

Deshler Broom Factory v. Kinney (1942) 140 Neb. 889, 2 N.W. (2d) 332;

Latham v. State Unemployment Compensation Com'n (1941) 167 Ore. 371, 117 P. (2d) 971,

the following cases directly support the court's conclusions:

Dallas Fuel Co. v. Horne (1941) 230 Iowa 1148, 300 N.W. 303;

Walter Bledsoe Coal Co. v. Review Board, Etc. (Ind. Sup. Ct., 1943) 46 N.E. (2d) 477;

Sandoval v. Industrial Commission (1942) 110 Colo. 108, 130 P. (2d) 930;

In re North River Logging Co. (1942) 15 Wash. (2d) 204, 130 P. (2d) 64;

CONCLUSION.

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Dated, San Francisco, California,
August 8, 1945.

Respectfully submitted,

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Johnson v. Pratt (1942) 200 S.C. 315, 20 S.E. (2d) 865;
Moore. Et Al. v. Board of Review (C.C., W. Va., 1940) C.C.H. Unemployment Insurance Service (W. Va.), par. 1980.01;
New Jersey Board of Review Decision No. BR-52L, C.C.H. Unemployment Insurance Service (N.J.), par. 1980.03;
Pennsylvania Board of Review Decision No. B-44-6-RG-503, C.C.H. Unemployment Insurance Service (Pa.), pars. 1980.013, 1980.019.

(Appendix Follows.)

Appendix

ALASKA UNEMPLOYMENT COMPENSATION LAW.

(Chapter 4, Extraordinary Session Laws of 1937, as amended by Chapters 1 and 51, Session Laws, 1939)

Be it enacted by the Legislature of the Territory of Alaska:

DECLARATION OF TERRITORIAL PUBLIC POLICY. As a guide to the interpretation and application of this Act, the public policy of this Territory is declared to be as follows:

Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this Territory. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection aganst this greatest hazard of our economic life. This can be accomplished by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this Territory, require the enactment of this measure, under the police power of the Territory, for the compulsory setting aside of unemployment reserves to be used

for the benefit of persons unemployed through no fault of their own.

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Section 2. DEFINITIONS. • • •

(c) • • • provided, however, that if an individual has earned wages only in a seasonal industry, his claim shall not be valid until the beginning of the claimant's next recurring seasonal period.

• • • • • • •

Section 3. BENEFITS. • • •

(c) As used in this subsection the term "seasonal industry" means an occupation or industry in which, because of the seasonal nature thereof it is customary to operate only during a regularly recurring period or periods of less than one year in length. The Commission shall, after investigating and hearing, determine, and may thereafter from time to time redetermine, the longest seasonal period or periods during which, by the best practice of the occupation or industry in question, operations are conducted. Until such determination by the Commission no occupation or industry shall be deemed seasonal.

(d) • • •

(2) Notwithstanding the foregoing provisions of the subsection, seasonal wage credits shall be available only with respect to weeks of unemployment occurring in whole or in part within the longest seasonal period (as determined pursuant to subsection (c) of this section) of the industry from which they were earned.

The term "seasonal wage credits" means wage credits based upon wages for employment by employers earned from a seasonal industry during the longest seasonal period, as determined by the Commission pursuant to subsection (e) of this section.

* * * * * * *

Section 5. DISQUALIFICATION FOR BENEFITS. An individual shall be disqualified for benefits:

* * * * * * *

(d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided, that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute;

* * * * * * *

Section 6. CLAIMS FOR BENEFITS.

* * * * * * *

(b) "Initial Determination." An examiner designated by the Commission shall take the claim. An initial determination thereon shall be made promptly and shall include a determination with respect to whether or not benefits are payable, the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum duration of benefits. In any case in which the payment or denial of benefits will be determined by the provisions of section 5(d) of this Act, the examiner shall promptly transmit all the evidence with respect to that subsection to the Commission. The Commission, or such representative as it may designate for such purpose,

shall, on the basis of the evidence so submitted and such additional evidence as it may require, make an initial determination with respect thereto. An initial determination may for good cause be reconsidered. * * * The claimant or any party to the determination may file an appeal from such initial determination * * *.

(c) "Appeals." An appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall unless such appeal is withdrawn affirm or modify the findings of fact and initial determination. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Commission, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of the section.

(d) "Appeal Tribunals." To hear and decide disputed claims, the Commission shall appoint one or more impartial appeal tribunals consisting in each case of a referee, selected in accordance with Section 11(d) of this Act. No person shall participate on behalf of the Commission in any case in which he is an interested party.

(e) "Commission." The Commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties of such decision to initiate further appeals before it. The Commission shall permit such further appeal by any of the parties to a decision of an appeal tribunal, and by the ex-

aminer whose decision has been overruled or modified by an appeal tribunal. The Commission may remove to itself to transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the Commission shall be heard by a quorum thereof in accordance with the requirements of subsection (c) of this Section. The Commission shall promptly notify the parties to any proceedings of its findings and decisions.

(f) "Procedure." The manner in which disputed claims shall be presented and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the Commission for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded unless a written stipulation to the contrary is signed by both parties and filed with the examiner, but need not be transcribed unless the disputed claim is further appealed.

* * * * * * *

(h) "Appeal to Courts." Any decision of the Commission in the absence of an appeal therefrom as herein provided shall become final thirty days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his administrative remedies as provided by this Act. The Commission shall be deemed to be a party to any judicial action

involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the Commission and designated by it for that purpose, or at the Commission's request by the Attorney General.

(i) "Court Review." Within thirty days after the decision of the Commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the United States District Court against the Commission for the review of such decision, in which action any other party to the proceeding before the Commission shall be made a defendant. * * * In any judicial proceeding under this Section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. * * * An appeal may be taken from the decision of the United States District Court as is provided in civil cases.

* * * * * * *

Section 11. ADMINISTRATION.

(a) "Duties and Powers of Commission." It shall be the duty of the Commission to administer this Act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner not inconsistent with the provisions of this Act, which the Commission shall prescribe. The Commission shall determine its own organization and methods of procedure in

accordance with the provisions of this Act, and shall have an official seal which shall be judicially noticed. • • •

(b) "Regulations; General and Special Rules." General and special rules may be adopted, amended, or rescinded by the Commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective thirty days after filing with the Secretary of the Territory and publication in one newspaper of general circulation in each of the four judicial divisions of the Territory for such period as the Commission may prescribe. Special rules shall become effective thirty days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission.

• • • • • • •

(e) "Advisory Councils." The Commission shall appoint a Territorial advisory council and may appoint local or industry advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment or affiliations, and of such members representing the general public as the Commission may designate. Such councils shall aid the Commission in formulating policies and discussing problems related to the administration of this Act and in assuring impartiality and freedom from political influence in the solution of such problems. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary expense.

FILE COPY

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1945

FILED
FEB 4 1946
CHARLES ELMORE CROPLEY

No. [redacted] 25

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as Members of and Constituting said Commission, and ALASKA PACKERS ASSOCIATION, a corporation, ALASKA SALMON COMPANY, a corporation, and RED SALMON CANNING COMPANY, a corporation,

Petitioners,

vs.

FRANK L. ARAGON and Other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL NO. 5 on Behalf of Applicants,

Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF FOR PETITIONERS.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1945

No. 309

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as Members of and Constituting said Commission, and ALASKA PACKERS ASSOCIATION, a corporation, ALASKA SALMON COMPANY, a corporation, and RED SALMON CANNING COMPANY, a corporation,

Petitioners,

vs.

FRANK L. ARAGON and Other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL No. 5 on Behalf of Applicants,

Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF FOR PETITIONERS.

OPINIONS BELOW.

The decision and opinion of the Referee appointed by the Unemployment Compensation Commission is at R. 608-643. The decision of the Commission is at R. 644-649. The opinion (R. 692-710) and findings of fact and conclusions of law (R. 711-718) of the District Court are not reported. The opinion of the Circuit Court of Appeals (R. 770-788) and the dissenting opinion of Judge Healy (R. 788-793) are reported in 149 F. (2d) 447.

JURISDICTION.

The decree of the Circuit Court of Appeals was entered May 15, 1945 (R. 793-794). The petition for a writ of certiorari was filed August 10, 1945. Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C. 347).

STATUTE INVOLVED.

Section 5(d) of the Alaska Unemployment Compensation Law (Alaska Statutes, Chapter 4, Extraordinary Session Laws of 1937, as amended by Chapters 1 and 51, Session Laws of 1939) provides:

> "*Disqualification for Benefits.* An individual shall be disqualified for benefits:
>
> * * * * * * *
>
> (d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed: provided that such

disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute; * * *"

Other pertinent provisions of the Alaska Act are copied in the appendix to this brief.

STATEMENT OF THE CASE.

Alaska Packers Association, Alaska Salmon Company and Red Salmon Canning Company (hereinafter called "employers") operate salmon canneries in Chignik, Karluk and Bristol Bay, Alaska. The individual respondents are salmon cannery workers, hired out of San Francisco, who were employed by employers during the 1939 season (R. 646, 712). Respondent, Alaska Cannery Workers Union, Local No. 5, is the bargaining agent of the individual respondents (R. 712).

In 1939, as had been the practice in previous years (R. 713-714), employers entered into an agreement with respondent union for the employment of men in the 1939 Alaska operations (R. 714). After the close of the 1939 season this agreement was terminated (R. 714), and thereafter negotiations commenced at San Francisco looking toward the execution of an agreement covering the 1940 operations (R. 714, 165, 262-263, 610). Employers were represented by Alaska Salmon Industry Inc., a corporation organized to handle labor negotiations of the salmon industry on the Pacific Coast (R. 260-261). The employees were represented by the union. Controversy arose. The union demanded increased wages and other working conditions more favorable than those provided in the 1939

agreement (R. 317, 614, 714). The employers, having suffered losses during the preceding year, proposed reductions (R. 243-244, 572, 615).

In Alaska the fishing and canning industry is seasonal. The seasonal periods for the three localities here involved, as fixed by the Commission pursuant to the provisions of Section 3(c) of the Alaska Act,[1] are: At Karluk from April 5 to September 5; at Chignik from April 1 to September 10, and at Bristol Bay from May 5 to August 5.[2] As negotiations continued the time approached when the expeditions would have to leave. On April 3 the employers notified the union that if operations were to be carried on at Karluk it would be necessary to reach an agreement by April 10; and if operations were to be carried on at Chignik it would be necessary to reach an agreement by April 12.

In the meantime, the union notified the employers that further negotiations (on all but certain subsidiary matters) would be carried on at Seattle (R. 321-322). The employers concurred and their representatives continued negotiations in both San Francisco and Seattle (R. 333, 339-340). Proposals and counter proposals continued but the parties were unable to settle their dispute and the respective deadlines for Karluk and Chignik came and passed with no agreement reached.[3]

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[1]Appendix, p. ii.

[2]Benefit regulation No. 10, R. 199, 201. Karluk is on Kodiak Island, and Chignik on the Alaska Peninsula, both on the Pacific side of the Alaska Peninsula. Bristol Bay is on the northern side of the Peninsula, opening into the Bering Sea.

[3]The negotiations and the matters which were the subject of the dispute are summarized in the findings of the Referee (R. 613-627), and in the opinion (R. 697-699), and findings (R. 713-716) of the District Court.

Further meetings were held in an effort to agree on terms for work at Bristol Bay (R. 372-377), and on April 26 the employers notified the union that unless agreements could be reached by May 3 no expedition to Bristol Bay could be undertaken (R. 378). As this day approached further communications were sent by the employers urging that negotiations be concluded (R. 382-393e); meetings were held; definite and unqualified written proposals were made by the employers (R. 393e, 395-491); federal officials offered their services in an attempt to bring about an agreement and participated in meetings (R. 236, 499-502). The dispute continued, however, and the deadline for Bristol Bay came and passed.

Negotiations continued at Seattle and numerous meetings were held at least as late as May 29, when an agreement was finally reached as to workers out of Portland and Seattle, but expressly excluding workers out of San Francisco.[4]

Immediately after May 3—the last deadline date—and prior to the conclusion of the Seattle negotiations, respondents filed claims with petitioner, the Unemployment Compensation Commission of Alaska, for unemployment compensation. The Commission held respondents disqualified for benefits for the statutory period of eight weeks, under the provisions of Section 5(d) of the Alaska Act, supra.

Respondents asked for a hearing, asserting that they were not engaged in, and their unemployment was not due to, a labor dispute (R. 3, 4-5). A hearing on these issues

[4] R. 614-615, 627, 84-86, 90-94, 98-102, 141, 190-191, 339-341, 503.

was granted and held before a Referee appointed by the Commission (R. 25-608).[5]

At the hearing respondents contended that no "labor dispute" within the meaning of the Act existed, because the situation was one where the employers simply refused to negotiate an agreement, or where the parties simply failed to arrive at a contract; that the employer-employee relationship terminated at the close of the 1939 season and no labor dispute can exist without the interruption by strike or work stoppage of an existing employer-employee relationship; that if a labor dispute existed, it was not "in active progress" after the respective deadline dates, since the dispute ended on those dates; and that, finally, respondents' unemployment was not "due" to the dispute, because the employers did not negotiate in good faith but intended to, and did, abandon their operations for reasons other than the labor dispute (R. 29-30, 202-203, 204-205, 612).

The Referee found that "There is no evidence to support the Union's contention that the Employers acted in bad faith in the course of the negotiations" (R. 628); that "All operations contemplated by the Employers and the Union for 1940 were abandoned for the reason that a mutually satisfactory working agreement was not negotiated by the dates set by the Employers, as the 'deadline' for the respective districts" (R. 633); that "A fair consideration of all the evidence submitted leaves no escape from the conclusion that a labor dispute existed and was in active progress between the Employers and the

[5]This was in accordance with Section 6(c) and (d) of the Alaska Act, Appendix, p. iv.

Union up to the expiration of the dates fixed by the Employers for the consummation of the working agreements for the respective plants" (R. 638); but that "the labor dispute ceased to be in active progress," as to the three districts, upon the expiration of the respective "deadline dates," since, upon those dates, "the dispute which had raged between [the Employers] and the Union" came to an end (R. 640). Accordingly, the Referee ordered that compensation be denied from the opening of the season up to the respective deadline dates, but be allowed for the balance of the season (R. 642-643).

Respondents, satisfied with this decision, did not appeal (R. 645). The employers appealed to the full Commission (R. 645). The Commission reversed the Referee and affirmed its initial determination, holding that a labor dispute existed and continued during the disqualification period, and that respondents' unemployment was due to that dispute (R. 644-649). Compensation accordingly was allowed, to commence after the expiration of eight weeks (R. 649).

The respondents petitioned for review in the District Court in accordance with the provisions of section 6(h) and (i) of the Alaska Act,[6] repeating the contentions they had made before the Referee. The District Court overruled these contentions and affirmed the findings and conclusions of the Commission (R. 692-718).

Respondents appealed, raising identically the same contentions.[7]

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[6]Appendix, pp. v-vi.

[7]The assignment of errors in the Circuit Court of Appeals (R. 722-745), except for minor and unsubstantial differences, is a copy of the petition for review in the District Court (R. 650-672).

The Circuit Court of Appeals gave no consideration to any point raised in that court or raised in the tribunals below. Instead it reversed the judgment upon the volunteered ground that the statutory language, "an individual shall be disqualified for benefits * * * for any week * * * that his * * * unemployment is due to a labor dispute which is in active progress at the factory * * * at which he is or was last employed," requires that the actual negotiations must be physically conducted on the premises of the factory at which the employee was last employed in order for the disqualification to apply (R. 774-777). It further held that the respondents were disqualified for the period commencing with the start of the fishing season at Karluk and Chignik and ending on the day of the deadline imposed by the employers, because respondents had not appealed from the Referee's decision which disqualified them for such period on the theory that the dispute existed and continued in active progress until the deadline dates (R. 781).

The Circuit Court of Appeals went further. It devoted more than nine pages of its opinion (R. 778-787) to a statement that the point upon which it decided the case was in fact raised and considered "throughout the litigation" (R. 786).

Judge Healy dissented (R. 788-793). He pointed out that the ground of decision was "volunteered" by the majority of the court (R. 788); that "Unless we choose to misunderstand we can not mistake the propositions of law and fact upon which review of the Commission's determination was sought" (R. 790). He expressed the further views (R. 791-793):

"This case is not one originally cognizable by the court. It is purely a review proceeding. The act provides [Section 6(h)] that judicial review of a decision 'shall be permitted only if any party claiming to be aggrieved thereby has exhausted his administrative remedies.' I think it is clear that no issue may be urged on review that was not squarely presented to the Commission. The court, no less than the parties, is foreclosed from injecting issues not so presented. Yet this court has not only done that, it has decided the spurious issue without benefit of argument on the part of counsel, and without giving the Commission an opportunity to be heard.

* * * * * * * *

Being of the belief that the question made the basis of the majority decision is not properly before us, I refrain from discussing it beyond saying that it distorts the statutory policy and ignores the actualities of this seasonal operation. * * * The findings of the Commission on the questions actually presented to it are supported by evidence, and I see no sufficient reason for disturbing the administrative decision."

SPECIFICATIONS OF ERRORS TO BE URGED.

1. The Circuit Court of Appeals erred in holding that the question decided by it was raised before and considered by the Commission and the District Court, and was raised in the Circuit Court of Appeals.

2. The Circuit Court of Appeals erred in stating that said question was raised before and considered by the Commission and the District Court, and was raised in the Circuit Court of Appeals, and, in so ruling, so far de-

parted from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

3. The Circuit Court of Appeals erred in reversing the decree of the District Court and the findings and decision of the Alaska Unemployment Compensation Commission upon a ground not raised in, or considered by, the Commission or the District Court.

4. The Circuit Court of Appeals, in reversing the findings and decision of the Commission upon a ground not raised in or considered by the Commission, erred in that it failed to give effect to the requirement of the Alaska Act, and of the general law, that parties shall exhaust their administrative remedies before resort to the Court, and to the requirements of the Alaska Act that the determination whether claims are properly payable under the Act shall be first made by the Commission, and that the hearing in Court shall be confined to "review" of the Commission's decision.

5. The Circuit Court of Appeals, in reversing the findings and decision of the Commission upon the ground that the dispute was not "at the factory, establishment or other premises" at which respondents were last employed, erred in that it failed to give effect to the rule that an administrative finding, if it has warrant in the facts of record and a reasonable basis in law, is conclusive upon the Court on review.

6. The Circuit Court of Appeals erred in failing to hold that the Commission's findings were supported by

the evidence and had a reasonable basis in law and were, therefore, conclusive upon the Court on review.

7. The Circuit Court of Appeals erred in holding that the disqualification provided in Section 5(d) of the Alaska Act is not applicable unless the labor dispute physically takes place at the particular factory, establishment or other premises at which the particular claimant was last employed.

8. The Circuit Court of Appeals erred in failing to affirm the decision of the District Court which sustained the findings and decision of the Commission.

SUMMARY OF ARGUMENT.

I. Questions of the specific application of broad statutory terms to particular facts, in a proceeding in which the agency administering the statute must determine such questions initially, are to be determined by the administrative agency, and its determination is conclusive upon the reviewing Court if the term under consideration has no unvarying legal significance and there is a rational basis for the administrative determination.

II. The determination of the Alaska Unemployment Compensation Commission is warranted by the record and has a reasonable basis in law.

A. The statute and the proceedings.

B. There was a labor dispute.

C. The dispute was in active progress at the establishment at which respondents were last employed for the period of disqualification fixed by the Commission.

D. The respondents' unemployment was due to a labor dispute.

III. The grounds upon which the Circuit Court of Appeals based its decision are untenable.

A. The decision fails to recognize that the determination of the Commission should be followed if it is warranted by the record before the Commission and has a reasonable basis in law.

B. The Circuit Court of Appeals erred in reversing the District Court and the Commission upon a ground not raised before the Commission, the District Court or the Circuit Court of Appeals.

C. In any event, the function of the Circuit Court of Appeals in this case is limited to returning the case to the Commission for further proceedings.

ARGUMENT.

I.

QUESTIONS OF THE SPECIFIC APPLICATION OF BROAD STATUTORY TERMS TO PARTICULAR FACTS, IN A PROCEEDING IN WHICH THE AGENCY ADMINISTERING THE STATUTE MUST DETERMINE SUCH QUESTIONS INITIALLY, ARE TO BE DETERMINED BY THE ADMINISTRATIVE AGENCY, AND ITS DETERMINATION IS CONCLUSIVE UPON THE REVIEWING COURT IF THE TERM UNDER CONSIDERATION HAS NO UNVARYING LEGAL SIGNIFICANCE AND THERE IS A RATIONAL BASIS FOR THE ADMINISTRATIVE DETERMINATION.

The proposition stated in the above heading has become well established.

Board v. Hearst Publications (1944), 322 U. S. 111; 130, 132;

Gray v. Powell (1941), 314 U. S. 402, 411-413;

Rochester Tel. Corp. v. U. S. (1939), 307 U. S. 125, 144-146;

South Chicago Co. v. Bassett (1940), 309 U. S. 251, 257-258.

In the *Hearst* case the administrative tribunal had determined that newsboys were "employees" within the meaning of the National Labor Relations Act. This finding having "warrant in the record" and a "reasonable basis in law" was held to be conclusive. The Court pointed out that the determination of such questions belongs to the usual administrative routine of the Board, and that (322 U. S. 131)

> " * * * where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function

> is limited. Like the commissioner's determination under the Longshoremen's & Harbor Workers' Act, that a man is not a 'member of a crew' * * * or that he was injured 'in the course of his employment' * * *; and the Federal Communications Commission's determination that one company is under the 'control' of another * * *, the Board's determination that specified persons are 'employees' under this Act is to be accepted if it has 'warrant in the record' and a reasonable basis in law."

In the *Rochester Telephone* case the Commission had found that one company was under the "control" of another. This Court pointed out that a finding whether control exists depends upon the facts of each case; that (307 U. S. 145-146):

> "So long as there is warrant in the record for the judgment of the expert body it must stand * * * 'The judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body.'"

In the *South Chicago* case the question was whether the employee was a member of a "crew." The Court held that the determination of that question had been confided in the Deputy Commissioner. It rejected the contention that the question was purely one of law upon undisputed facts, pointing out that "The word 'crew' does not have an absolutely unvarying legal significance."

In *Gray v. Powell* the question was whether one of the parties was a "producer" of coal within the meaning of the statute. This Court held that the determination of that issue had been vested by the Congress in the adminis-

trative body, and that its determination was conclusive upon the courts so long as it rested upon a rational basis (314 U. S. 411-413):

> "Such a determination as is here involved belongs to the usual administrative routine. Congress, which could have legislated specifically as to the individual exemptions from the code, found it more efficient to delegate that function to those whose experience in a particular field gave promise of a better informed, more equitable adjustment of the conflicting interests of price stabilization upon the one hand and producer consumption upon the other. * * *
>
> Where as here a determination has been left to an administrative body, this delegation will be respected and the administrative conclusion left untouched. Certainly a finding on Congressional reference that an admittedly constitutional act is applicable to a particular situation does not require such further scrutiny. Although we have here no dispute as to the evidentiary facts, that does not permit a court to substitute its judgment for that of the Director. * * * It is not the province of a court to absorb the administrative functions to such an extent that the executive or legislative agencies become mere fact finding bodies deprived of the advantages of prompt and definite action.
>
> * * * To determine upon which side of the median line the particular instance falls calls for the expert, experienced judgment of those familiar with the industry. Unless we can say that a set of circumstances deemed by the Commission to bring them within the concept 'producer' is so unrelated to the tasks entrusted by Congress to the Commission as in effect to deny a sensible exercise of judgment, it is the

Court's duty to leave the Commission's judgment undisturbed."

In the case at bar the legislature specifically clothed the Commission with the duty of determining the facts and the application of the statute to those facts. Section 5(d) provides for disqualification

> "For any week with respect to which *the Commission finds* that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; * * *."

The question whether a particular controversy constitutes a labor dispute, and whether that dispute is in active progress, and whether that dispute is at the factory of last employment, are all questions of the same character as whether a party is an employee, or a member of a crew, or a producer, or subject to "control." Whether they be called questions of fact, or mixed questions of law and fact, or questions relating to the application of broad statutory terms to particular facts—the established rule is that the administrative determination is binding if it has support in the evidence and a basis in reason.[8]

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[8]State decisions construing statutes identical in substance to the Alaska Act are in accord.

Miners in General Group v. Hix (W. Va. Sup. Ct., 1941), 17 S. E. (2d) 810;

Department of Industrial Relations v. Pesnell (1940), 29 Ala. App. 528, 199 So. 720;

Ex parte Pesnell (1941), 240 Ala. 457, 199 So. 726 (cert. den., 313 U. S. 590), affirming *Department of Industrial Relations v. Pesnell* (1940), 29 Ala. App. 528, 199 So. 720;

Barnes v. Hall (1941), 285 Ky. 160, 146 S. W. (2d) 929.

II.

THE DETERMINATION OF THE ALASKA UNEMPLOYMENT COMPENSATION COMMISSION IS WARRANTED BY THE RECORD AND HAS A REASONABLE BASIS IN LAW.

A. The statute and the proceedings.

The preamble of the Alaska Unemployment Compensation Law provides:

> "*Declaration of Territorial Public Policy.*
>
> As a guide to the interpretation and application of this Act, the public policy of this Territory is declared to be as follows:
>
> Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this Territory. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the

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Block Coal & Coke Co. v. United Mine Workers, Etc. (1941), 177 Tenn. 364, 148 S. W. (2d) 364;
Deshler Broom Factory v. Kinney (1942), 140 Neb. 889, 2 N. W. (2d) 332;
Latham v. State Unemployment Compensation Com'n (1941), 167 Ore. 371, 117 P. (2d) 971;
Dallas Fuel Co. v. Horne (1941), 230 Iowa 1148, 300 N. W. 303;
Walter Bledsoe Coal Co. v. Review Board, Etc. (Ind. Sup. Ct., 1943), 46 N. E. (2d) 477;
Sandoval v. Industrial Commission (1942), 110 Colo. 108, 130 P. (2d) 930;
In re North River Logging Co. (1942), 15 Wash. (2d) 204, 130 P. (2d) 64;
Johnson v. Pratt (1942), 200 S. C. 315, 20 S. E. (2d) 865;
Moore et al. v. Board of Review (C. C., W. Va., 1940), C.C.H. Unemployment Insurance Service (W. Va.), par. 1980.01;
New Jersey Board of Review Decision No. BR-52L, C.C.H. Unemployment Insurance Service (N.J.), par. 1980.03;
Pennsylvania Board of Review Decision No. B-44-6-RG-503, C.C.H. Unemployment Insurance Service (Pa.), pars. 1980.013, 1980.019.

Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be accomplished by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this Territory, require the enactment of this measure, under the police power of the Territory, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own."

The disqualification provision reads as follows:

"*Disqualification for Benefits.* An individual shall be disqualified for benefits:

* * * * * * * *

(d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided, that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute; * * *"

The Commission determined that the unemployment of the respondents was due to a labor dispute which, during

the disqualification period, was in active progress at the establishment at which the respondents were last employed.[9]

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[9]The Act provides that the Commission shall make an "Initial Determination" in all 5(d) cases upon evidence transmitted to the Commission by its examiner (Sec. 6(b)); that an appeal tribunal, consisting of a referee selected as provided in the Act (Sec. 6(d)), may affirm or modify the initial determination (Sec. 6(c)); and that finally, the Commission, whose determination is conclusive if supported by the evidence (Sec. 6(i)), may affirm, modify or set aside any decision of an appeal tribunal (Sec. 6(e)).

The initial determination of the Commission in this case is not included in the record but is referred to in the decision by the Referee (R. 608, et seq.) as follows:

> "• • • The claimants having been disqualified by an initial determination of the Unemployment Compensation Commission from receiving unemployment benefits for eight weeks on the ground that their unemployment was due to a labor dispute in active progress at the establishment at which they were last employed, under the provisions of section 5(d) of the Alaska Unemployment Compensation Act, the Alaska Commission appointed a Referee • • •."

See also Referee's opinion and decision (R. 634).

See also opinion of the District Court (R. 692, 694), where the Court said:

> "Their [respondents] claims were first considered by an Examiner of the Commission, who denied them benefits, except after the first eight weeks following the opening of the season at the canneries in question, under the provisions of Sec. 5(d) of the Alaska Unemployment Compensation Act, on the ground that 'their unemployment was due to a "labor dispute" in active progress at the establishment at which they were last employed.'"

The Referee subsequently overruled the Commission's initial determination on the sole ground that the dispute ceased to be in active progress on the deadline dates imposed by the employers (decision by Referee, R. 634, 641, et seq.).

Finally, the Commission overruled the Referee and sustained its initial determination, denying benefits to the claimants except after the first eight weeks following the opening of the season of the canneries in question.

See Commission's decision on appeal (R. 644, et seq.); see also opinion of District Court (R. 692, 694).

B. There was a labor dispute.

Respondents have vigorously protested, since the inception of this proceeding before the Commission, that there was no labor dispute within the meaning of the Act. In fact, this proposition was advanced as the foundation of the primary attack upon the respective determinations, all adverse to respondents, of the Examiner, the Commission itself, and the District Court.

The Act contains no definition of the term "labor dispute." The Commission in this case had no precedent or prior determination of the meaning of this term in this Act. Therefore, it was for the Commission to decide to give to the term a reasonable meaning consistent with the purposes of the Act. It had to choose between the very narrow definition of the term insisted upon by respondents, that the term referred only to strikes occurring on the premises which prevented the men from going to work, or the comprehensive definition of the term similar to that which is to be found in the Norris-LaGuardia Act (29 U.S.C., sec. 113(c)) or in the National Labor Relations Act (29 U.S.C., sec. 152(9)), wherein the term "labor dispute" is defined as including in general any controversy concerning terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment regardless of whether or not the disputants stand in the proximate relation of employer and employee. The Commission chose the latter, and that such construction is reasonable is evident from the record and also from the fact that a

similar conclusion has been reached by the courts of last resort of every state in which the question has arisen.[10]

The uncontradicted evidence shows that the respondents and the employers held a series of meetings in an attempt to reach a collective bargaining agreement covering the 1940 terms and conditions of employment for the fishing season in Alaska, and eventually failed to come to terms. It is respectfully submitted that the Commission in determining that the facts of the case establish the existence of a labor dispute applied a meaning to the term "labor dispute" quite rational and reasonable in every respect, and that it was well justified in rejecting the narrow definition of the term upon which respondents insisted.

C. The dispute was in active progress at the establishment at which respondents were last employed for the period of disqualification fixed by the Commission.

The Examiner, the Referee, the Commission, and the District Court were in full accord as to the eight weeks' disqualification of the respondents with respect to every issue raised in the proceedings, with the single exception that the Referee took the position that the active progress of the dispute ended when the employers' deadline had been reached. On this issue the Referee was reversed by the Commission, and the Commission was upheld by the District Court.[11]

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[10] See cases cited in footnote 8, pp. 16 and 17, supra.

[11] The Act provides that the findings of the Commission if supported by evidence and in the absence of fraud shall be conclusive (Sec. 6(i)).

The Referee argued and respondents contend that when the employers notified the unions that if operations were to be carried on it would be necessary that agreements be reached with respect to Karluk by April 10, 1940, with respect to Chignik by April 12, 1940, and with respect to Bristol Bay by May 3, 1940, the disputes ended on such dates since no agreements were reached. That was the end of the matter, said the Referee. The dispute and all issues involved, to use his expressive language, became a "dead horse." The Referee conceded, of course, that the dispute had been in active progress, had "raged," as he put it, up to the date of these deadlines (R. 640). The Commission, on the other hand, held that a dispute existed, that it was in active progress, and that it continued beyond the deadlines and for the full term of the eight weeks' disability provision.

Again we have to consider whether the determination by the Commission as to the meaning and application of the term "in active progress" in this case was rational and proper. Certainly the term is not one of absolutely unvarying legal significance. The words "in active progress" were inserted in the statute to protect the workman from disqualification if the labor dispute were settled by such an agreement as prevented the employment of the claimant workman, as, for instance, where the settlement resulted in a closed shop, the applicant being nonunion, or, in recognition of a union of which claimant was not a member, or any other termination which left the claimant unemployed through no fault of his own. This is the clear meaning ascribed to the words by the Commission, and, being rational, is conclusive.

We respectfully submit that in addition to the reason above given, the Referee's analysis as to the proper application of the term is clearly erroneous.

First, there is a definite distinction between the dispute as such, i. e., the contest, the struggle, and the physical negotiations and acts of the parties done in carrying on the dispute; and second, there were in fact, in the case at bar, meetings and negotiations subsequent to the deadlines (R. 626-627, 84-86, 90-94, 98-100, 339-341).

At the time this brief is written there are a number of labor disputes in existence, with respect to many of which the parties are at a complete impasse. Ultimatums have been given. The offers of each antagonist have been unconditionally refused by the other. No further meetings are scheduled. In many instances the employees are on strike, in others, strikes have been threatened or strike dates have been set. No one believes, we respectfully submit, that these labor disputes are over, that they have been terminated, or that they are no longer in active progress. The fact that the parties, having given ultimatums, stand squared off glaring at one another does not establish the end of active progress. There is no evidence in the record that after the deadline set by the employers further discussions might not have resulted in going to Alaska for a limited season if an agreement had been reached, either because of concessions, changes in economic conditions or for any other reason. The record does show that the parties did meet in Seattle after the deadline dates and did discuss wages, the primary bone of contention (R. 626-627, 84-86, 90-94, 98-100, 339-341). The Commission did not have to decide as to the exact date

when the dispute ended, a problem which obviously the Referee found troublesome. The Commission did find in keeping with the obvious policy of the law that the dispute continued for the eight weeks' period. The Referee based his contrary conclusion in part upon his assumption that unless the dispute were held to have terminated on the deadline dates, the dispute, like Banquo's ghost, would continue indefinitely (R. 639). The legislature, however, specifically provided against the effect of any such possibility by limiting the term of the disqualification to a maximum of eight weeks.

Beyond this, all of the other evidence is consistent with the fact that the dispute was in active progress and as such continued through the season. The employers intended to operate and would have operated their plants in Alaska at all three locations. They offered respondents work. Respondents, through their collective bargaining agents, demanded higher wages and other terms of employment more favorable than the employers in good faith felt they could accept. Respondents refused to work under the conditions offered. Far from terminating on the date of this impasse, the dispute at that time ripened into open disagreement which continued through the season.

Clearly, this determination of the Commission is a rational one. When the statute speaks of a labor dispute in active progress, it means a labor dispute affecting the work at the plant. The dispute may be passive if the plant is operating, but if the dispute is such as to actually prevent the plant from operating, it is active—it is in active progress with respect to its effect on the plant. And it is in active progress at the plant if the effect of the

progress is to stop work at the plant. Thus, the dispute in stopping the work at the plant during the 1940 season did continue in active progress through the 1940 season at the plant at which the work was stopped.

A distinction must be drawn between a labor dispute and negotiations. The former can exist without the latter. As a matter of fact, negotiations are not an essential part of the labor dispute, rather they seek to put an end to the labor dispute.

This brings us to the second part of the clause which we are discussing which requires that the dispute must be in active progress "at the factory, establishment or other premises at which he is or was last employed; * * *." Not only the Examiner, the Referee, the Commission, and the District Court, but counsel for both petitioners and respondents assumed that this portion of the clause must necessarily refer to the plant or establishment affected by the dispute, and that, if the dispute involved the work at such establishment, it necessarily followed that the dispute was "at" the establishment within the meaning of the Act. Contrary contention arose for the first time in the decision of the Circuit Court of Appeals. That Court reversed the District Court on the ground that since neither of the parties, in speaking to each other with respect to the dispute, had actually been standing or sitting in the plants involved in the dispute, the disqualification could not apply. The Circuit Court of Appeals did not express any views on the question as to whether the contrary determination of the Commission was rational or irrational, whether it had warrant in the record or a reasonable basis in law, or whether the determination

of the Commission should in any respect be persuasive or controlling upon the Circuit Court of Appeals. We will discuss this decision later in our brief.[12]

We do wish to say here, however, that as between the determination of the Commission with respect to the meaning and application of this portion of the statute and the determination of the Circuit Court of Appeals with respect thereto, we respectfully contend that the determination of the Commission is rational and reasonable, and the determination of the Circuit Court of Appeals highly irrational and most unreasonable. The provision we are here considering is not unique to the Alaska Unemployment Compensation Law. It has been adopted in like or substantially similar language in the unemployment compensation laws of some forty-three states, the District of Columbia, and the Territory of Hawaii.[13] It is, we respectfully submit, unreasonable to assume that the legislatures of these states and territories and the Congress had in mind that an employee would be disqualified if unemployment resulted from a dispute argued out between the employer and the union negotiating committee in the front office of the plant but would not be disqualified if the argument took place in a hall, hotel room, or public meeting place across the street. No legislature could be oblivious to the fact that contract negotiations are, in the minority of instances, carried out within the fences of the plant itself. Generally, both the negotiating committee and the management prefer to

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[12]See page 28, et seq.

[13]See citations of these statutes at pages 26-29 of the Petition for a Writ of Certiorari.

carry out these negotiations away from the plant so as not to disrupt the work of other employees. It is a common practice for negotiations to be carried on in a city far removed from the plant. How unfair it would be if the employees of General Motors, United States Steel or of the Anthracite Coal Industry would be free from disqualification simply because conditions require the meetings to be held in some metropolis away from any plant, while an equally deserving employee of some small industrial plant would be disqualified merely because the local union happened to carry out the negotiations with the management at the plant itself.

D. The respondents' unemployment was due to a labor dispute.

This contention is purely factual. Respondents contended that their unemployment was not "due" to the dispute because the employers did not negotiate in good faith but intended to, and did, abandon their operations for reasons other than the labor dispute (R. 29-30, 202-203, 204-205, 612). The Referee, the Commission in both its initial and final determinations, and the District Court all held against respondents. The Referee found: "There is no evidence to support the Union's contention that the Employers acted in bad faith in the course of the negotiations" (R. 628); "All operations contemplated by the Employers and the Union for 1940 were abandoned for the reason that a mutually satisfactory working agreement was not negotiated by the dates set by the Employers, as the 'dead line' for the respective districts * * *" (R. 633). The record is replete with evidence that the employers intended to sail, made all necessary prep-

arations to sail, and actually purchased quantities of gear as well as perishable supplies so that they could sail and conduct a fishing operation for the 1940 season (R. 530-536, 560-565). Any decision that respondents' unemployment was due to any cause other than a labor dispute would have been contrary to the evidence in the record (R. 530-576).

III.

THE GROUNDS UPON WHICH THE CIRCUIT COURT OF APPEALS BASED ITS DECISION ARE UNTENABLE.

The decision of the court below is in conflict with the applicable decisions of this Court, first, because it fails to recognize that the determination of the Commission should be followed if it is warranted by the administrative record and has a reasonable basis in law, second, because it is based on a volunteered point not raised before the Commission or before the District Court or included within the assignment of errors before the Circuit Court of Appeals, and third, because in failing to remand the case to the Commission the Court usurped the function of the Commission.

A. The decision fails to recognize that the determination of the Commission should be followed if it is warranted by the record before the Commission and has a reasonable basis in law.

We have heretofore established the clear principle that the function of a reviewing court with respect to a determination of a commission charged with the administration of a statute is to ascertain whether the interpretation

placed upon the terms of the statute and the application of such terms is fairly warranted from the record before the commission and has a reasonable basis in law. Unless the statutory term has an absolutely unvarying legal significance it is for the administrative body to determine the definition of such term as well as its application, and this determination, so long as it stays within the bounds of reasonableness is conclusive.

The Circuit Court of Appeals without so much as referring to the rule or discussing the reasonableness of the Commission's determination takes it upon itself to decide that, since neither the employers nor the respondents nor any of their respective agents were physically located within the limits of the canneries in Alaska at the time the negotiations for a collective bargaining agreement were conducted, the dispute was not in active progress at the plant or establishment at which respondents were last employed.

We have heretofore commented upon the unreasonableness of this interpretation and, conversely, the reasonableness of the interpretation given this provision by the Commission (supra, pp. 26-27).

The phrase "dispute * * * in active progress at the factory" does not have an "absolutely unvarying legal significance."[14] A dispute may be in progress "at" a plant if negotiations are in progress on the actual plant premises, but it may also be in progress "at" a plant if the work stoppage arising out of the dispute continues

[14] *South Chicago Co. v. Bassett* (1940), 309 U. S. 251, 258, supra.

at the plant while negotiations to end it are being conducted across the street, or at any other place at the convenience of the negotiators. It may be in progress "at" all of several plants owned by the same employer although active disputation takes place only at one,[15] or it may be in progress "at" all of several plants owned by several employers while negotiations are conducted by common bargaining agents at one of the plants or elsewhere. All of these are familiar situations.

As pointed out by Judge Healy, the construction given the statute by the Court below "distorts the statutory policy and ignores the actualities of this seasonal operation" (R. 792). Men for the Alaska fishing operations are hired each year at San Francisco, Portland and Seattle. They return to these cities each year and live there. Many unions are involved in the whole Alaskan operations. Their headquarters, their officers, are in San Francisco, Portland and Seattle. For more than forty years—since prior to 1901—negotiations concerning working conditions for the Alaskan fishing and canning season have been carried on every year at San Francisco; for some of these years at Seattle. Agreements must be reached before the opening of the season. Negotiations must occur when it would be impracticable, if not impossible, to be in Alaska. It is a matter of judicial knowledge that Bristol Bay is icebound during the winter; inaccessible by boat. Except for planes which now fly in on skis, the only way to reach the plants in winter is by dog team

[15] See: *Chrysler Corporation v. Smith* (1941), 297 Mich. 438, 298 N. W. 87.

through the arctic night. Karluk and Chignik on the southern side of the Alaska Peninsula can be reached by boat, but no scheduled ships ever call there in winter and it would be nearly as difficult to arrange for off-season labor negotiations there as at Bristol Bay. Further, under the decision of the Circuit Court of Appeals it would be necessary, if one union were the bargaining agent for all of the men, to go from plant to plant and re-enact the dispute before the statutory disqualification would apply.

The Court's theory as to the meaning of the statute becomes more difficult to support when reference is made to the returning vessels carrying the men back from Alaska as the last place of employment. As the decision now stands, it is far from clear whether the disqualification, which is obviously intended to serve a real purpose in the statute, applies only if the negotiations pertaining to the dispute are carried on at the cannery in Alaska or whether they must be conducted with respect to each employee on the deck of the particular vessel in which such employee returned.

If the opinion is subject to the interpretation that the place of last employment is the vessel itself, then a new set of problems exist which make the application of the disqualification provision impractical. Not only were a number of vessels employed in bringing the respondents to and from Alaska, but different employers owned different vessels. It so happened that the vessels in which these particular respondents sailed were severally owned by the employers, but there are many vessels which take

employees to Alaska, which are chartered for that purpose for the fishing or mining season, and which are not available to the employer or the employees as a bargaining spot when negotiations commence for the following season. With respect to vessels owned by the employer, they are often chartered by the employer during the off-season so that during the course of negotiations these vessels are often not available as a bargaining place. To interpret the statute as applying the disqualification only in the event negotiations were conducted on the deck of each vessel which carried during the preceding season employees involved in the dispute would defeat the very purpose of the section and reduce it to an utter absurdity. Furthermore, the application of such a doctrine in labor disputes involving other industries would produce incongruous results. If in order for the disqualification to apply the dispute negotiations must be conducted at the point or place of last employment, the disqualification might apply to a group of employees with the exception of some favored few who by chance might have been away from the factory at the time the strike started or the employment terminated. An employee who was sent off the premises to pick up tools or to deliver merchandise or to get supplies might thus, by sheer accident, be entitled to the full benefit of the statute when his less favored coworker would be disqualified. It certainly, we respectfully submit, was not the purpose of the statute to achieve any such result as this. Thus the rationality of the Commission's construction of the disqualification provision is impressive.

The decision not only ignores these actualities of Alaskan seasonal operations, but also the actualities and history of American labor relations in general. Unions frequently and fairly demand "neutral grounds" for the settlement of disputes. Numerous negotiations—certainly many of the most important—are conducted by representatives of all workers in many widely-separated plants under different managements. The negotiations between the United Mine Workers and the coal operators in 1939, carried on by John L. Lewis and others at New York and Washington and referred to in the decisions hereinafter cited,[16] are familiar examples.

So far as our research discloses, the exact point upon which the Circuit Court of Appeals based its decision has been raised in only one case, *Koski, et al. v. UCC, et al.*, C.C.H. Unemployment Insurance Service, Oregon, par. 8046, where is was characterized by the Court as "ridiculous" and unworthy of serious consideration. The Court said:

> "There remains the question as to whether this labor dispute is one which under the statute constitutes a disqualification barring these claimants from unemployment compensation. Counsel for plaintiff urges that it is not. Counsel's theory is that Section 126-705, O.C.L.A., excludes this conclusion by the provision that the labor dispute must be one 'in active progress at the factory, establishment or other premises' in or on which the employee works; and counsel argues that any dispute which existed did not take place upon the premises of these employers.

[16] Page 34, infra.

> This argument cannot be taken seriously by the Court, and evidently was not by the Commission. If the interpretation given by counsel is to be applied to the statute, it would result in the admittedly ridiculous situation where any kind of labor dispute could be carried on without disqualifying the men from getting unemployment compensation, provided only the disputants kept off the real property of the employer. This could not have been the intention of the Legislature, and in the opinion of this Court the statute must be interpreted as meaning a dispute which affects the wages, hours or conditions of labor at the factory, establishment or other premises involved, regardless of where the disputing is done."

The decision of the court below is also in conflict with *Block Coal & Coke Co. v. United Mine Workers, Etc.* (1941), 177 Tenn. 364, 148 S. W. (2d) 364; *Miners in General Group v. Hix* (W. Va. Sup. Ct., 1941) 17 S. E. (2d) 810; *Dallas Fuel Co. v. Horne* (1941), 230 Iowa, 1148, 300 N. W. 303; *Department of Industrial Relations v. Pesnell* (1940), 29 Ala. App. 528, 199 So. 720 (affirmed, *Ex Parte Pesnell* (1940), 240 Ala. 457, 199 So. 726, cert. den., 313 U. S. 590); *Sandoval v. Industrial Commission* (1942), 110 Colo. 108, 130 P. (2d) 930; *Walter Bledsoe Coal Co. v. Review Board, Etc.* (Ind. Sup. Ct., 1943), 46 N. E. (2d) 477; *Moore et al. v. Board of Review* (C. C., W. Va., 1940), C.C.H. Unemployment Insurance Service (W. Va.), par. 1980.01.

All of these cases arose out of the dispute in 1939 between United Mine Workers of America and the operators of coal mines in the various states. In each case

there was a stoppage of work pending negotiation of contracts. Negotiations were carried on by John L. Lewis and his associates, and by the representatives of the operators, in New York City and Washington, D. C. In all cases claims for unemployment compensation were filed and ultimately denied under the labor dispute disqualification provisions of the several acts—all identical with the provision in the Alaska Act. While the exact point decided by the court below was not raised by any of the employees,[17] its decision was necessarily involved since the negotiations occurred "at" New York and Washington and not "at" the various mines. The construction given to the statutory provision by the courts in each of these cases is illustrated by the following quotation from the *Block Coal & Coke Co.* case (148 S. W. (2d), p. 366):

> "The dispute was wholly with respect to matters relating to such labor, and we are unable to reach any other conclusion than that a labor dispute was in active progress throughout the period here involved touching the continuance or resumption of work at the premises at which each of these claimants 'was last employed.'"

The decision below is important to the Unemployment Compensation Commission of Alaska and to the Territory of Alaska. As the Referee pointed out (R. 642):

> "The Referee is conscious of the fact that his conclusion, if sustained by the Commission or the Court, will mean the practical exhaustion of the Unemployment Compensation fund of the Territory
> * * *"

[17] We suggest this point was not raised because of its unsubstantial character.

Beyond this, the decision if unreversed will seriously handicap all labor negotiations relating to Alaskan industries, particularly seasonal industries.[18] Employers will be reluctant to negotiate seasonal contracts at any place but at their respective plants in Alaska, notwithstanding the fact that during the months when negotiations must take place the plants are closed and virtually inaccessible, and the workers and employers are in the United States. This burden, great on the employers, will fall even more heavily on the workers. The creation of such a situation is unwarranted and defeats the purposes of the Act.

But the decision has more than local significance. It is a precedent of nationwide application in the important field of labor relations, and in a portion of that field closely integrated with federal law. Under the sponsorship of the Congress, through Title IX of the Social Security Act (49 Stat. 620, 639),[19] forty-three states, the District of Columbia, and the Territory of Hawaii have enacted unemployment compensation acts containing labor dispute disqualification provisions identical to the provisions of Section 5(d) of the Alaska Act here involved.[20] The decision below—bearing the authority of the only Federal Circuit Court of Appeals ever likely to pass upon the point—is a direct precedent as to the con-

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[18]These include not only the fishing and canning operations—the largest single industry in Alaska, but also among others, the important placer mining industry.

[19]Now incorporated in the Internal Revenue Code, 26 U.S.C. 1600-1611.

[20]See citations of these statutes at pages 26-29 of the Petition for a Writ of Certiorari.

struction of all of these statutes. The administration of each of these acts is financed in part by the Federal Government and is a matter of direct concern to the Federal Government. The decision of the court below is a precedent impairing labor relations and impeding the settlement of labor disputes throughout the nation. Employers and employees will be seriously handicapped in their efforts to negotiate on netural ground, or at points of common convenience, or at one common place where disputes involve more than one plant.

B. The Circuit Court of Appeals erred in reversing the District Court and the Commission upon a ground not raised before the Commission, the District Court or the Circuit Court of Appeals.

There is the further point, however, that the single issue upon which the Circuit Court of Appeals reversed the District Court and the Commission was not available to respondents before that Court, for the reason that it had never been urged at any time before in any of the proceedings, including those in the Circuit Court of Appeals—in fact, the converse to the conclusion reached by that Court had been conceded by respondents time and time again.

Without deciding any of the points actually urged by respondents, the Circuit Court of Appeals reversed the judgment on the sole ground that the dispute was not at the factory or establishment at which respondents were last employed. This argument proceeded on the premise that the place of last employment was either shipside in San Francisco, where the respondents left their respective ships on their return from the 1939 operations, or at the

plants or establishments in Alaska where they were engaged in the canning of fish in 1939. The evidence, of course, clearly showed that the negotiations of the parties were held at neither of these places but were in fact held in San Francisco and in Seattle, places chosen for that purpose by the parties to the dispute.

The decision goes to some lengths to establish that the issue as to place of dispute was properly before the Circuit Court of Appeals and that it had been raised below on numerous occasions by the respondents. The quotations in the opinion of the Circuit Court of Appeals of instances represented as places where the point was raised, upon an examination of the record, will be found to be merely instances where the statutory language happens to have been used in the assertion of one or another of the questions actually raised.[21]

An examination of the record, particularly the portions quoted below, will establish the development of the case through the Commission and the District Court and the objections, grounds for review, and assignments of error which the respondents made to the determinations of these tribunals.

The first proceeding which appears in the record is the hearing before the Referee appointed for the purpose of taking testimony by the Alaska Unemployment Compensation Commission (R. 25). The hearing took place in San Francisco and commenced on June 17, 1940. This hearing was upon objections to the initial determination of the applicants' claims for benefits by the Alaska Unem-

[21] See Petition for Writ of Certiorari herein, pp. 11-15.

ployment Compensation Commission (R. 608, 634), "* * * The claimants having been disqualified by an initial determination of the Unemployment Compensation Commission from receiving unemployment benefits for eight weeks on the ground that their unemployment was due to a labor dispute in active progress at the establishment at which they were last employed, under the provisions of section 5 (d) of the Alaska Unemployment Compensation Act * * *" (R. 608).

The Referee found and determined, first, that from the date of the commencement of the fishing season in 1940 until the date of the respective deadlines "a labor dispute was in active progress with reference to the operation" of the particular plant at which the employee was last employed, but, second, that the dispute ended at the deadline dates. Accordingly he directed that benefits to the deadline dates be denied, but that benefits after such deadline dates should be awarded (R. 642-643).

From this determination, the employers appealed but respondents did not (R. 645). On appeal the Commission reversed the decision and conclusion of the Referee and allowed benefits in accordance with the Commission's initial determination (R. 644-649), thus determining that an active labor dispute existed at the opening of the season at the plants at which the respondents respectively were last employed, and that such dispute continued at such places for the eight weeks' disqualification period, that is to say, at the Karluk Cannery for eight weeks after April 5th, at the Chignik Cannery for eight weeks after April 1st, and at the Bristol Bay Cannery for eight weeks after

May 5th, said eight weeks being in addition to the regular two weeks waiting period (R. 648-649).

Against this determination, respondents filed a petition for review (R. 650-672) on the grounds (1) that petitioners were not disqualified on account of any labor dispute in active progress within the meaning of Section 5(d) of the Act (R. 654); (2) that the Commission erred in finding that negotiations were in active progress at the opening of the season (R. 656); (3) that a "labor dispute" did not exist between the parties (R. 660); (4) that the determination that there was "an *active* labor dispute existing between the parties at the *opening of the season*" was erroneous (R. 660-662); and (5) that the conclusion of the Commission that "the dispute *continued*" was erroneous (R. 662).

In this connection and in this petition for review respondents took the position and conceded:

> "Therefore, if there was a dispute, it ended at Karluk on April 10, 1940, and at Chignik on April 12, 1940, and applicants last employed in 1939 in plants at those areas are not disqualified after those dates that the dispute was not in 'active' progress.
>
> With regard to Bristol Bay, the dispute ended on May 3, 1940 two days before the season opened" (R. 665).

This was always the position of the respondents from the inception of the case to and including the oral argument before the Circuit Court of Appeals. Respondents always contended that there was no labor dispute, that it was not in active progress after the deadline dates, and

that the unemployment was not due to the dispute. At no time did they contend that the dispute was not at the plant or establishment at which respondents were last employed.

The District Court, on respondents' petition for review, upheld the Commission (R. 719). In its findings of fact, the Court found:

> "9. That the labor dispute which was in progress long before the opening dates for fishing and canning as hereinabove set forth, existed and was in active progress at the Chignik, Karluk and Bristol Bay canneries during the entire season as defined by the Commission.
>
> 10. That the unemployment of claimants in the 1940 fishing and canning season, and the whole thereof, was due to a labor dispute existing between the employers, the respondent companies herein, and the claimants, and that this labor dispute was in active progress at the cannery at which they were respectively last employed, and there was an active labor dispute between the claimants and the respondent employers during the entire canning season as defined by the Commission at the respective canning plants at Chignik, Karluk, and various points in Bristol Bay, Alaska" (R. 716).

In its conclusions of law, the District Court held:

> "1. The Claimants were not unemployed 'through no fault of their own,' but were unemployed because they were unwilling to accept employment offered them. The claimants were unemployed due to a labor dispute which was during the entire fishing and canning season of 1940 as defined by the Commission in active progress at the factory, establishment or other premises at which they were last employed" (R. 717).

On appeal to the Circuit Court of Appeals respondents directed the following assignments of error to findings Nos. 9 and 10:

"V.

That finding No. 9 made by the District Court is not supported by the evidence in the following respects:

(1) No labor dispute existed within the meaning of the Alaska Unemployment Compensation Law.

(2) Admitting for the sake of argument that a labor dispute existed at one time, it did not exist and was not in active progress at the Chignik, Karluk and Bristol Bay canneries during the entire season as defined by the Commission, but said labor dispute was in active progress at Chignik only from April 1, 1940, to April 12, 1940, and terminated on April 12, 1940, and was not in active progress at Chignik during the balance of the 1940 season; that said labor dispute was in active progress at Karluk only from April 5, 1940, to April 10, 1940, and terminated on April 10, 1942, and was not in active progress at Karluk during the balance of the 1940 season; that at the commencement of the season at Bristol Bay no labor dispute was in active progress, and no labor dispute existed with respect to the Bristol Bay operations at any time during the 1940 season.

VI.

That Finding of Fact No. 10 made by the District Court is not supported by the evidence adduced before the Referee and the Commission in that the unemployment of applicants and appellants during the 1940 season was not due to a labor dispute existing between applicants and appellants on the one hand and respondent companies on the other; and admitting for the sake of argument that a labor dispute existed at

one time, said labor dispute was not in active progress during the said 1940 season in the plants where applicants were respectively last employed, but said labor dispute, if any, terminated at Chignik on April 12, 1940 and terminated at Karluk on April 10, 1940, and was not in existence at all at Bristol Bay during the 1940 Bristol Bay season" (R. 724-726).

With respect to conclusion of law No. 1, respondents directed the following assignment:

"X.

That Conclusion of Law No. 1 made by the District Court is in error and contrary to law in that applicants and petitioners were not unemployed because they were unwilling to accept employment offered them or because of a labor dispute which was in active progress during the entire 1940 Alaska salmon packing season but, on the contrary, said applicants and appellants were unemployed during the said 1940 season because respondent companies failed and refused to employ applicants and failed and refused to enter into a collective bargaining agreement with the Union of which applicants were and are members. That said Conclusion of Law is contrary to and not supported by the evidence in that the evidence shows that if a labor dispute existed, it terminated at Chignik on April 12, 1940, at Karluk on April 10, 1940 and was not in existence at all at Bristol Bay during the said 1940 season, and therefore applicants and appellants were entitled to benefits accordingly" (R. 728-729).

The conclusion is irresistible that the dissenting opinion of Judge Healy is correct in asserting that the point and the sole point upon which the majority opinion relies was

never advanced by the respondents in this action or by anyone until it appeared in the decision of the Circuit Court of Appeals.

C. In any event, the function of the Circuit Court of Appeals in this case is limited to returning the case to the Commission for further proceedings.

The Alaska Act imposes upon the Commission the administration of the Act and the determination of the validity of claims presented thereunder, subject only to "review" in the courts after administrative remedies have been exhausted. Even if the Circuit Court of Appeals were correct (and we respectfully submit it was not) in holding that the Commission's findings do not conclusively determine that the dispute was in active progress "at" the plants in Alaska, its action in remanding with direction to enter a final order is still erroneous, for it denies the Commission the opportunity to make any determination, initial or otherwise, of the important point involved. The decree remands with direction to enter a final order. The Commission is wholly deprived of the power, in a matter of exceptional importance, to exercise its function of determining the appropriate application of the Act.

See

Phelps Dodge Corp. v. Labor Board (1941), 313 U. S. 177, 196-197;

Regal Knitwear Co. v. Board (1945), 324 U. S. 9, 13.

In the *Phelps Dodge* case this Court said:

"The administrative process will best be vindicated by clarity in its exercise. Since Congress has defined the authority of the Board and the procedure by which it must be asserted and has charged the federal courts

with the duty of reviewing the Board's orders (§10(e) and (f)), it will avoid needless litigation and make for effective and expeditious enforcement of the Board's order to require the Board to disclose the basis of its order. We do not intend to enter the province that belongs to the Board, nor do we do so. All we ask of the Board is to give clear indication that it has exercised the discretion with which Congress has empowered it. This is to affirm most emphatically the authority of the Board."

The Alaska Act further provides that the Commission shall determine the manner in which disputed claims shall be presented. Its rule in this regard is clear from its decision herein. It held that since respondents took no objection or appeal from the findings of the Referee, they were bound by his ruling (R. 645). The same rule applies to the point made the basis of the decision below. The entire administrative scheme is frustrated if questions as to the application of the statute to particular facts are taken from the hands of the expert administrative tribunal charged with its administration. In usurping the administrative function of the Commission, the decision of the Circuit Court of Appeals is in conflict, not only with the decisions of this Court stating accepted limitations upon judicial review, e.g.,

Helvering v. Wood (1940), 309 U. S. 344, 348-349;
Denver Stock Yard Co. v. U. S. (1938), 304 U. S. 470, 484-485; and
U. S. v. Northern Pacific Ry. Co., 311 U. S. 317, 370-372,

but also with the decisions of this Court cited earlier on pages 13-16 of this brief.

CONCLUSION.

It is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

Dated, San Francisco, California,
February 1, 1946.

Respectfully submitted,

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(Appendix Follows.)

Appendix

ALASKA UNEMPLOYMENT COMPENSATION LAW.

(Chapter 4, Extraordinary Session Laws of 1937, as amended by Chapters 1 and 51, Session Laws, 1939)

Be it enacted by the Legislature of the Territory of Alaska:

DECLARATION OF TERRITORIAL PUBLIC POLICY. As a guide to the interpretation and application of this act, the public policy of this Territory is declared to be as follows:

Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this Territory. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be accomplished by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this Territory, require the enactment of this measure, under the police power of the Territory, for the compulsory setting aside of unemployment reserves to be used

for the benefit of persons unemployed through no fault of their own.

* * * * * * *

Section 2. DEFINITIONS. * * *

(c) * * * provided, however, that if an individual has earned wages only in a seasonal industry, his claim shall not be valid until the beginning of the claimant's next recurring seasonal period.

* * * * * * *

Section 3. BENEFITS. * * *

(c) As used in this subsection the term "seasonal industry" means an occupation or industry in which, because of the seasonal nature thereof it is customary to operate only during a regularly recurring period or periods of less than one year in length. The Commission shall, after investigating and hearing, determine, and may thereafter from time to time redetermine, the longest seasonal period or periods during which, by the best practice of the occupation or industry in question, operations are conducted. Until such determination by the Commission no occupation or industry shall be deemed seasonal.

(d) * * *

(2) Notwithstanding the foregoing provisions of the subsection, seasonal wage credits shall be available only with respect to weeks of unemployment occurring in whole or in part within the longest seasonal period (as determined pursuant to subsection (c) of this section) of the industry from which they were earned.

The term "seasonal wage credits" means wage credits based upon wages for employment by employers earned from a seasonal industry during the longest seasonal period, as determined by the Commission pursuant to subsection (e) of this section.

* * * * * * *

Section 5. DISQUALIFICATION FOR BENEFITS. An individual shall be disqualified for benefits:

* * * * * * *

(d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided, that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute;

* * * * * * *

Section 6. CLAIMS FOR BENEFITS.

* * * * * * *

(b) "Initial Determination." An examiner designated by the Commission shall take the claim. An initial determination thereon shall be made promptly and shall include a determination with respect to whether or not benefits are payable, the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum duration of benefits. In any case in which the payment or denial of benefits will be determined by the provisions of section 5(d) of this Act, the examiner shall promptly transmit all the evidence with respect to that subsection to the Commission. The Commission, or such representative as it may designate for such purpose,

shall, on the basis of the evidence so submitted and such additional evidence as it may require, make an initial determination with respect thereto. An initial determination may for good cause be reconsidered. * * *. The claimant or any party to the determination may file an appeal from such initial determination * * *.

(c) "Appeals." An appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall unless such appeal is withdrawn affirm or modify the findings of fact and initial determination. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Commission, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of the section.

(d) "Appeal Tribunals." To hear and decide disputed claims, the Commission shall appoint one or more impartial appeal tribunals consisting in each case of a referee, selected in accordance with Section 11(d) of this Act. No person shall participate on behalf of the Commission in any case in which he is an interested party.

(e) "Commission." The Commission may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties of such decision to initiate further appeals before it. The Commission shall permit such further appeal by any of the parties to a decision of an appeal tribunal, and by the ex-

aminer whose decision has been overruled or modified by an appeal tribunal. The Commission may remove to itself to transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the Commission shall be heard by a quorum thereof in accordance with the requirements of subsection (c) of this Section. The Commission shall promptly notify the parties to any proceedings of its findings and decision.

(f) "Procedure." The manner in which disputed claims shall be presented and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the Commission for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded unless a written stipulation to the contrary is signed by both parties and filed with the examiner, but need not be transcribed unless the disputed claim is further appealed.

* * * * * * *

(h) "Appeal to Courts." Any decision of the Commission in the absence of an appeal therefrom as herein provided shall become final thirty days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his administrative remedies as provided by this Act. The Commission shall be deemed to be a party to any judicial action

involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the Commission and designated by it for that purpose, or at the Commission's request by the Attorney General.

(i) "*Court Review.*" *Within thirty days after the* decision of the Commission has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the United States District Court against the Commission for the review of such decision, in which action any other party to the proceeding before the Commission shall be made a defendant. * * * In any judicial proceeding under this Section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. * * * An appeal may be taken from the decision of the United States District Court as is provided in civil cases.

* * * * * * *

Section 11. ADMINISTRATION.

(a) "Duties and Powers of Commission." It shall be the duty of the Commission to administer this Act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner not inconsistent with the provisions of this Act, which the Commission shall prescribe. The Commission shall determine its own organization and methods of procedure in

accordance with the provisions of this Act, and shall have an official seal which shall be judicially noticed. * * *

(b) "Regulations; General and Special Rules." General and special rules may be adopted, amended, or rescinded by the Commission only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective thirty days after filing with the Secretary of the Territory and publication in one newspaper of general circulation in each of the four judicial divisions of the Territory for such period as the Commission may prescribe. Special rules shall become effective thirty days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission.

* * * * * * *

(e) "Advisory Councils." The Commission shall appoint a Territorial advisory council and may appoint local or industry advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment or affiliations, and of such members representing the general public as the Commission may designate. Such councils shall aid the Commission in formulating policies and discussing problems related to the administration of this Act and in assuring impartiality and freedom from political influence in the solution of such problems. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary expense.

FILE COPY

In the Supreme Court

OF THE

United States

Supreme Court, U. S.
FILED
OCT 7 1946
CHARLES ELMORE CROPLEY
CLERK

OCTOBER TERM, 1946

No. 25

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA, NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as Members of, and constituting said Commission; and ALASKA PACKERS ASSOCIATION, a corporation, ALASKA SALMON COMPANY, a corporation, and RED SALMON CANNING COMPANY, a corporation,

Petitioners,

vs.

FRANK L. ARAGON and Other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL NO. 5 on Behalf of Applicants,

Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

SUPPLEMENTAL BRIEF FOR PETITIONERS.

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No. 25

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Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

SUPPLEMENTAL BRIEF FOR PETITIONERS.

A. INTRODUCTION.

This case was argued before this Court on the 27th day of February, 1946, and ordered reargued in the October term. The purpose of this brief is threefold: first,

to comment on the fundamental principle of law involved in the light of *Social Security Board v. Nierotko*, 66 S. Ct. 637;[1] second, to amplify our discussion of the legislative history and construction in the light of the questions asked by the Court; third, to reply to certain parts of the Brief for Respondents not fully argued in Brief for Petitioners.

B. FUNDAMENTAL PRINCIPLE OF LAW.

We think it will clarify what follows if we here again state the fundamental principle of law upon which we rely. *In a proceeding in which the agency administering the statute must determine initially questions of specific application of broad statutory terms to particular facts the determination of such administrative agency is conclusive upon the reviewing court if the term under consideration has no unvarying legal significance and there is a rational basis for the administrative determination.*

Board v. Hearst Publications (1944), 322 U.S. 111, 130, 132;

Gray v. Powell (1941), 314 U.S. 402, 411-413;

Rochester Tel. Corp. v. U. S. (1939), 307 U.S. 125, 144-146;

South Chicago Co. v. Bassett (1940), 309 U.S. 251, 257-258;

Social Security Board v. Nierotko, supra;

United States v. Pierce Auto Freight Lines (1946), 90 L. Ed. (Advance Opinions) 629, 640-641.

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[1] This Court decided the *Nierotko* case February 25, 1946, two days before this case was argued and subsequent to the filing of petitioners' brief.

The most recent complete discussion of this principle is to be found in the *Nierotko* case. The problem there was whether this Court was bound to accept the decision of the Social Security Board that a "back pay" award by the National Labor Relations Board was not "wages" under the Social Security Act. This Court held that it was not so bound, saying (p. 643):

> "In the acts which were construed in the cases just cited [*National Labor Relations Board v. Hearst Publications* and *Gray v. Powell*], as in the Social Security Act, the administrators of those acts were given power to reach preliminary conclusions as to coverage in the application of the respective acts. • • •
>
> • • • Both N.L.R.B. v. Hearst Publications, page 131, of 322 U.S., page 860 of 64 S. Ct., 88 L. Ed. 1170, and Gray v. Powell, page 411 of 314 U.S., page 332 of 62 S. Ct., 86 L. Ed. 301, advert to the limitations of administrative interpretations. Administrative determinations must have a basis in law and must be within the granted authority. Administration when it interprets a statute so as to make it apply to particular circumstances acts as a delegate to the legislative power. Congress might have declared that 'back pay' awards under the Labor Act should or should not be treated as wages. Congress might have delegated to the Social Security Board to determine what compensation paid by employers to employees should be treated as wages. Except as such interpretive power may be included in the agencies' administrative functions, Congress did neither. An agency may not finally decide the limits of its statutory power. That is a judicial function. Congress used a well understood word—'wages'—to indicate

> the receipts which were to govern taxes and benefits under the Social Security Act. There may be borderline payments to employees on which courts would follow administrative determination as to whether such payments were or were not wages under the act.
>
> We conclude, however, that the Board's interpretation of this statute to exclude back pay goes beyond the boundaries of administrative routine and the statutory limits. This is a ruling which excludes from the ambit of the Social Security Act payments which we think were included by Congress. It is beyond the permissible limits of administrative interpretation."

Mr. Justice Frankfurter's concurring opinion said that "it is a plain disregard of the law for the Social Security Board not to include such payments among the employees' wages." The Act did not "give the Board judicially unreviewable authority to exclude from wages what as a matter of law are wages."

Unless, as respondents contend, the term "labor dispute" can mean only such disputes as are evidenced by strikes[2] and has such "well understood" meaning and is thus "beyond the permissible limits of administrative interpretation," the *Nierotko* principle has no application. Obviously, the term has no such commonly accepted meaning. As a matter of fact, if it has any commonly accepted meaning, it must be that defined in the Norris-LaGuardia Act, 29 U.S.C., sec. 113(c), and the National Labor Relations Act, 29 U.S.C., sec. 152(9). Congress in these recent years of social legislation has evidenced its under-

[2]Res. Br. p. 14.

standing of the term by a clear definition in both these acts. Nor does the *Nierotko* principle comfort respondents with respect to other terms of the Act under consideration upon which the Commission placed its interpretation. Deviation from *Gray v. Powell* is only permitted under the *Nierotko* case when the agency has interpreted a term contrary to the obvious intention of Congress. No such situation exists here, as we shall point out.[3]

This Court in *United States v. Pierce Auto Freight Lines*, supra, again held:

> "The function of the reviewing court is much more restricted. It is limited to ascertaining whether there is warrant in the law and the facts for what the Commission has done. Unless in some specific respect there has been prejudicial departure from requirements of the law or abuse of the Commission's discretion, the reviewing court is without authority to intervene. It cannot substitute its own view concerning what should be done, whether with reference to competitive considerations or others, for the Commission's judgment upon matters committed to its determination, if that has support in the record and the applicable law" (pp. 640-641).

C. FUNDAMENTAL PURPOSE OF THE ACT.

1. LEGISLATIVE HISTORY.

A brief sketch of the history of the unemployment insurance law in the United States will show that a study and report was made to the President of the United States

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[3]See this brief, pp. 5-11 incl.

by the Committee on Economic Security in January, 1935, together with a draft bill for introduction in Congress.[4] The national act, then designated the Social Security Act,[5] became law on the 14th day of August, 1935.[6]

The national act does not provide benefits directly to the unemployed. It levies a tax and provides a framework under which states adopting approved state laws can participate in the funds so raised to defray their costs of administration. While Congress was considering the bill which subsequently became the Social Security Act, the Committee on Economic Security prepared drafts of model state unemployment compensation bills, which drafts with slight variations were subsequently adopted by each of the various states and territories until the broad framework was filled in and became complete. The Alaska Act substantially follows the model most universally adopted, and the problems which arise in this case are inherent in most, if not all, of the state acts.

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2. THE PURPOSES OF THE ACT.

The purposes of the Act were taken almost verbatim from the model bill and read as follows:

> "*Declaration of Territorial Public Policy.* As a guide to the interpretation and application of this act, the public policy of this Territory is declared to be as follows:

---

[4]Excerpts from this report will be found in the Appendix on pages ii-iii.

[5]Title IX of that act, dealing with unemployment compensation, is now known as the Federal Unemployment Tax Act.

[6]Excerpts from the Senate Finance Committee Report will also be found in the Appendix on pages i-ii.

> Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this Territory. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be accomplished by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this Territory, require the enactment of this measure, under the police power of the Territory, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own" (Alaska Statutes, chapter 4, Extraordinary Session Laws of 1937).

The Alaska Unemployment Compensation Commission found that the respondents were disqualified from benefits. On appeal the District Court of the United States for the Territory of Alaska upheld the Commission's determination and found that the men were not unemployed "through no fault of their own."[7] At the oral argument, Mr. Justice Black asked what facts supported this finding.[8]

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[7] R. 717.

[8] Questions are stated from memory of counsel, and while we believe the text contains the substantial purport of the questions, they are not quoted.

The entire factual situation supports this finding. The conceded facts—that the employers had work for the men to do, had employed them in previous years, had plants and equipment at and with which employment was available, and offered to employ them under the same conditions and at the same rates of pay as the Seattle employers offered to and did employ men for similar work during the 1940 season involved in this dispute—amply support the finding. The record clearly shows that the only reason respondents refused to go at the 1940 Seattle rate was their insistence that their rate be either the 1940 Seattle rate or the San Francisco rate for the 1939 season, whichever was the higher (R. 94-95, 115-117, 196-198). Regardless of the fairness of the 1940 Seattle rate, respondents were unwilling to take a possible reduction in wages as a matter of principle (R. 189). No contention was made that the 1940 Seattle rate was not adequate or compensatory, and, in fact, the union later accepted it. The refusal of the employees here involved to accept it was a choice voluntarily made by them over the employers' constant efforts to get them to accept employment. From every standpoint in the case there can be no question that there is sufficient evidence to justify the District Court in finding that the men were not unemployed through no fault of their own and the Commission in imposing the disqualification.

In determining the real purposes of the Act, we can look further than the declaration of territorial public policy to the origin of this legislation on a national scale. The basis of the national scheme for such insurance was the building of a fund through taxation. To accomplish

this the national Social Security Act was passed, with the method of distributing the fund to be set out in the model acts to be adopted by the states. The framers of this legislation had a well-defined purpose. They knew what they should and could do and what they should not and could not do as a practical matter. Never for one instant did they have in mind that all persons unemployed should receive insurance. They knew that any workable act would have to contain disqualifications for persons out of work because of a labor dispute. Otherwise, they envisioned the obvious practical difficulties with which the scheme would be faced. The necessity of including such disqualifications was always present in their thinking. We find it in the model state bills prepared by the Committee on Economic Security. The Committee undoubtedly had before it unemployment insurance systems adopted by England[9] and certain European countries, each of which contained disqualification provisions in the case of labor disputes. These laws, some of which have been in effect for years, indicate that the practical exigencies of human nature require such disqualification in order that the fund may be maintained and be available when needed for genuine, involuntary unemployment. As Mr. Justice Cardozo said in *Steward Machine Co. v. Davis*, 301 U. S. 548 (p. 586):

> "During the years 1929 to 1936, when the country was passing through a cyclical depression, the number of the unemployed mounted to unprecedented heights."

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[9]Unemployment Insurance Act, 1920, sec. 8(1) (20 Chitty's Statutes, 6th Ed., 865, 872).

and

> "the states were unable to give the requisite relief. The problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve."

In spite of all that has been done to improve and perfect the economic processes of our country, no one can say that cyclical depressions may not again occur, that unemployment may not follow in their wake and that the funds of this country now available for unemployment insurance will not be called upon to keep citizens from starving. If this be the scheme and purpose of the Act, as this Court held in the *Steward* case, then it is important for this Court to weigh heavily the expressed ideas of the framers of this social scheme and to give important consideration to the protective devices upon which they insisted for the maintenance of the fund.

Mr. Justice Black also asked if a man was offered employment at 50 cents an hour which he refused to accept because he could not live at that wage, was he disqualified under the Act as being unemployed through fault of his own. The Act provides for just such a contingency. Section 5 (c) of the Act provides for disqualification in the event the applicant fails without good cause to accept available, suitable work. The Act then carefully spells out a definition of these terms and includes specific provisions that the disqualification shall not apply

> "(A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
>
> (B) If the wages, hours, or other conditions of the work offered are substantially less favorable to

the individual than those prevailing for similar work in the locality;

(C) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization."

Thus, the natural apprehension which Mr. Justice Black had for an employee's welfare under the conditions he visualized is carefully worked out in the model act and included in the Alaska Act.

While the administrative function of the Alaska Commission obviously includes the application of these protective provisions to each case, the record amply shows that here we have no distortion of this function.[10]

Mr. Justice Reed asked whether the respondent individuals could have gone to work by signing up in Seattle. The employers would have permitted and in fact welcomed it. The only thing which would have prevented it was (a) the inability of the men to get to Seattle, and (b) the barrier placed in their way because of jurisdictional or other conflict with the Seattle local (R. 124-125), but they could, of course, have gone from San Francisco at the 1940 Seattle rate.

---

3. THE TERM "LABOR DISPUTE."

Respondents' fundamental argument[11] for reversing the Commission and denying the application of the disqualification has always been based upon their insistence for a

[10] Supra, p. 8.

[11] Respondents describe it on page 19 of their brief as the "cardinal question."

narrow interpretation of the term "labor dispute." Before the Commission and the courts below, in their briefs and in the oral argument before this Court in February, counsel for respondents again and again have insisted that the term "labor dispute" be given a narrow, restricted meaning so as to liberalize the benefits conferred by the Act. They have argued that there was no labor dispute here, within the meaning of the Act, because the men were not actually working the job and did not actually strike the job.[12] It is contended that the definitions of "labor dispute" contained in the Norris-LaGuardia Act and the National Labor Relations Act do not apply—that this being remedial legislation primarily for the benefit of workmen, a much narrower and more restricted definition of "labor dispute" should be read into the Act so that these respondents receive their benefits without any disqualification.

This argument, as we pointed out in our opening brief, is without support in reason or authority; indeed, as respondents have unqualifiedly admitted at the oral argument, it is contrary to the rulings of every court in every state that has had occasion to consider it.

We wish to add here one new point that seems to us conclusive against respondents' contention, both from the standpoint of technical statutory construction and sound considerations of policy.

[12] Respondents describe their position as follows:

> "In other words, we think it is a fair construction of the Alaska Act to say that the term 'labor dispute' means a *strike* or the *leaving of employment* by workers pursuant to a dispute between their union and the employer over wages, conditions, representation, or some other clearly recognized employer-employee controversy" (Res. Br. p. 14 (Respondents' italics)).

The term "labor dispute" appears but once in the Social Security Act of 1935. In Section 903(a)(5) Congress carefully inserted a provision for the protection of the working man, imposing restrictions on the type of state law which the Social Security Board could approve. It provided that—

> "Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; • • •"

In no other place in the national act is "labor dispute" mentioned. Nor does it define "labor dispute." The national act followed by less than six weeks the National Labor Relations Act which did contain a broad and comprehensive definition of the term "labor dispute." Both of these laws were designed for the protection of workers. No serious contention can be made, we submit, that the term "labor dispute" was used in the Social Security Act in any different sense than it was used in the National Labor Relations Act. By the use of the words "strike, lockout, or *other* labor dispute" Congress certainly recognized, as it consistently has in other legislation, that the term "labor dispute" is broader than mere strike or lockout, and just as certainly it did not intend that individuals might be denied benefits if they refused jobs made available by a labor dispute such as that involved in the instant case.[13] We have pointed out that the Committee which drafted the Social Security Act was at the same

[13]Italics in this brief are ours unless otherwise noted.

time drafting the model bill subsequently adopted by the Alaska Legislature. Did the Committee intend that "labor dispute" in the Social Security Act means one thing and in the model act another? Did the Committee intend that "labor dispute" means one thing when referring to disqualification and another when requiring that benefits be given to unemployed persons if the only jobs available were due to a labor dispute? Respondents' argument for a narrow definition of the term may in the end work greater hardship on workingmen as a whole than if the true definition is held to be the proper one.

This question must be determined on the basis of the intention of the legislative bodies which enacted these laws. The term was obviously used in the same sense in which it was defined in the National Labor Relations Act. It is only in this sense that proper protection can be given to persons entitled to it under the provisions of the national act. To say that the term has some narrow and much restricted sense in the Alaska Act would, if applied uniformly throughout that Act, defeat the obvious protection which Congress insisted on giving those workers who refused to work on jobs available only because of a labor dispute.

There is a further important consideration. The Alaska Act cannot be construed abstractly, unrelated to the particular problems of that Territory. Climatically Alaska permits employment in its major industries only during limited seasons of the year. Historically many, if not substantially all, of these industries outfit in the United States, employ their labor here, and send expeditions annually to Alaska to operate during the permitted season.

The Alaska Unemployment Compensation Commission was faced with construing language contained in the Act in the light of the industrial realities in Alaska. While it is elementary that direct violence to the obvious meaning of the Act must be avoided, nevertheless slavish adherence to its exact terminology may produce an abortive result or even utter contradiction of its expressed purposes.[14] When terms used may mean one of two things, consideration must be given to the background and expressed purposes of the Act and the Commission must be upheld in choosing that meaning which furthers such purposes. Indeed, if it were necessary to go so far in sustaining the action of the Commission, it is quite clear that under the peculiar facts of this seasonal industry, the concerted refusal of the employees to *resume* the work they had left the preceding season was for all practical purposes a strike.

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4. THE MEANING OF THE PROVISION IN SECTION 5(d) "FOLLOWING THE BEGINNING OF SUCH DISPUTE."

Mr. Justice Douglas asked the time of the beginning of the 8 weeks' disqualification, in view of the provision "that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute." The Commission found that the disqualification began at the beginning of the season for the "Canned Salmon Industry" in each of the three districts. The applicable part of the section provides:

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[14] As stated by this Court in *Utah Junk Company v. Porter* (1946), 90 L. Ed. (Advance Opinions) 796, 798, "All construction is the ascertainment of meaning. And literalness may strangle meaning."

"An individual shall be disqualified for benefits:

* * * * * * * *

(d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided, that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute; * * *."

We respectfully submit that the language just quoted evidences an intent on the part of the Alaska Legislature that "the beginning of *such* dispute" obviously refers to the "labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed" during the period that the applicant's "total or partial unemployment is due" to such dispute.

Unless or rather until a labor dispute starts to be in active progress at the factory, establishment or other premises so as to create the unemployment for which the individual is entitled to benefits, except for the application of the disqualification provision, the limitation upon the disqualification period should not and does not commence to run. This logical and practical interpretation placed by the Alaska Unemployment Compensation Commission upon the language of section 5(d) accords with the intention of the Legislature. To argue that the disqualification period commences to run before employment could commence seems to us at least to be most unreasonable. We assume it also seemed unreasonable to respondents because this point was not urged here or in any court below or before the Commission.

Looking at the matter strictly from the viewpoint of the Legislature, one must conclude that the Legislature, while deeming benefits advisable, limited such benefits to persons unemployed because of a labor dispute so that a disqualification of 8 weeks must first expire before benefits would be payable. To go back to the beginning of the dispute in the sense of the date upon which the parties first began to discuss their labor contract would in most cases destroy the disqualification. In the normal case the employer and the union sit down and negotiate for days, weeks and often months before a climax is reached resulting in a work stoppage and consequent unemployment. Obviously the legislature could not have intended the commencement of the disqualification period to date back to the commencement of the various discussions. It is only if these words are interpreted to mean the beginning of the unemployment that they assume any practical or reasonable meaning.[15]

[15] In several states the Legislature, recognizing the ambiguity of this expression, has clarified it by using language to designate the commencement of the unemployment due to the labor dispute.

Section 592, New York Unemployment Insurance Law (C.C.H. Unemployment Insurance Service, New York, par. 4108);

Section 402, Pennsylvania Unemployment Compensation Law (C.C.H. Unemployment Insurance Service, Pennsylvania, par. 4102);

Section 7(4), Rhode Island Unemployment Compensation Act (5 C.C.H. Unemployment Insurance Service, Rhode Island, par. 4044);

Section 5(d), Tennessee Unemployment Compensation Law (6 C.C.H. Unemployment Insurance Service, Tennessee, pars. 4009-4013).

D. ANSWER TO RESPONDENTS' BRIEF.

1. THE REMEDIAL NATURE OF THE ACT.

The statute involved is remedial. Respondents claim:

> "The Act, being remedial in nature, is to be liberally construed and with a view toward awarding, rather than denying, benefits. Exemptions from the benefits of the Act must be strictly construed." (Res. Br. p. 5.)[16]

Respondents' text, as well as the authorities upon which they rely, clearly illustrates that the principle for which they contend has no application here. No question is here involved concerning "Exemptions from the benefits of the Act." We agree that

> "the framers of the act planned to extend the benefits of the legislation to as wide a class as could be comprehended within the meaning of the term employee, * * *."[17]

We also agree with respondents that "Exempt employment is strictly construed."[18] We certainly agree with Mr. Justice Murphy, who said in the *Phillips* case:

> "Any *exemption* from such humanitarian and remedial legislation must therefore be narrowly construed,

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[16]Respondents cite *Phillips Co. v. Walling*, 324 U.S. 490; *Steward Machine Co. v. Davis*, 301 U.S. 548; *Helvering v. Davis*, 301 U.S. 619; *Willard Sugar Co. v. Gentsch*, 59 F. Supp. 82; *Latimer v. United States*, 52 F. Supp. 228; *Cal. Emp. Com. v. L. A. Etc. News Corp.*, 24 Cal. (2d) 421, 150 P. (2d) 186. They also cite the unreported, unappealed-from decision of the Multnomah County, Oregon, Circuit Court in *Danzer v. UCC, et al.*, C.C.H. Unemployment Insurance Service, Oregon, par. 1980.001, where the court upset the commission's finding on the ground that the facts showed that the unemployment was not due to a labor dispute.

[17]Quoted from *Willard Sugar Co. v. Gentsch*, 59 F. Supp. 82, 84 (Res. Br. p. 9).

[18]Res. Br. p. 9.

giving due regard to the plain meaning of statutory language and the intent of Congress. To extend an *exemption* to other than those plainly and unmistakably within its terms and spirit is to abuse the interpretative process and to frustrate the announced will of the people" (p. 493).

This rule has no application here. We are not dealing with exemptions or exclusions from the Act. Respondents are clearly entitled to the coverage of the Act and all the protection the Act affords, but they are not entitled to more money than the Act gives them or to greater benefits than the Act provides. There is no legal principle that legislation, remedial or otherwise, should be interpreted to give persons benefits contrary to the plain and sensible meaning of the statutory language.

Further, as above pointed out, the remedial feature of this statute is to accumulate funds and to award them as benefits to employees unemployed involuntarily because of depressions and other economic factors beyond their control. To construe the Act to award benefits in other situations so as to deplete the fund would destroy and not remedy the purpose sought to be achieved.[19] Therefore, if the Legislature clearly intended to limit benefits

[19] "The essential idea in unemployment compensation is the creation of reserves during periods of employment from which compensation is paid to workmen who lose their positions when employment slackens and who cannot find other work. Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis, but only while the worker is involuntarily unemployed. • • • Payment of compensation is conditioned upon continued involuntary unemployment. Beneficiaries must accept suitable employment offered them or they lose their right to compensation" (Senate Finance Committee Report, Appendix p. i).

to certain persons under certain conditions or even to deny them benefits for limited periods, the intention of the Legislature as expressed in the Act is controlling. In such instances, it is the function of the adminstrative body to interpret the language used by the Legislature to carry out the legislative intent. Such bodies are trained for this purpose. The Court should not override this function unless clearly abused as a matter of law.

These principles have been uniformly followed by the state courts in applying disqualification provisions of social security legislation.

In re North River Logging Co. (1942), 15 Wash. (2d) 204, 130 P. (2d) 64;

Johnson v. Pratt (1942), 200 S.C. 315, 20 S.E. (2d) 865;

Bodinson Mfg. Co. v. California E. Com. (1941), 17 Cal. (2d) 321, 109 P. (2d) 935;

Matson Terminals, Inc. v. Cal. Emp. Com. (1944), 24 Cal. (2d) 695, 151 P. (2d) 202;

W. R. Grace & Co. v. Cal. Emp. Com. (1944), 24 Cal. (2d) 720, 151 P. (2d) 215.

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2. THE COMMISSION DID NOT ERR IN HOLDING THAT THE UNEMPLOYMENT WAS DUE TO A LABOR DISPUTE.

Respondents argue that the unemployment was not due to a labor dispute because (a) this was a seasonal industry and their unemployment ended at the close of the 1939 season, (b) their unemployment was due to the fact that the employers tried to force wage cuts and locked them

out, and (c) the former employees of the Alaska Salmon Company, as well as the employees of the Alaska Packers Association, were unemployed due to other causes.[20]

If, as petitioners contend, a "labor dispute" existed in this case, there is no merit to reasons (a) and (b). If the dispute prevented the employment at the commencement of the 1940 season, the disqualification applies regardless of the existence of employer-employee relationship. Further, under the law, the disqualification applies in the event of a dispute. We think the employers were entirely justified in insisting upon one over-all rate for all cannery workers that were leaving from San Francisco or Seattle. Nevertheless disqualification is not conditioned upon the fairness or unfairness of either party to the dispute.

Reason (c) resolves itself to this: The Alaska Salmon Company was apparently less well financed than the other two companies and could not afford to leave late and thus lose profit opportunity of a full season. Therefore, it determined earlier than the others that it would not go. Nevertheless it bargained in good faith with the union over a long period of time and made preparations for its trip until the continuance of the dispute caused it to decide not to go. The Commission properly concluded that it was the continuous labor dispute which prevented the Alaska Salmon Company from going, and indeed it is difficult to see how the Commission could have reached any other conclusion.

The Alaska Packers Association planned to take fewer men because of a curtailed season. Respondents argue that since fewer men would have been employed in 1940

[20]Res. Br. pp. 25-28, incl.

than in 1939, certain individuals would have been unemployed for this reason, and since it is impossible to tell which individual would have been among those left, all are entitled to compensation.

We submit that if there is one function which must clearly be the Commission's it is the determination of such questions as these—the application of the facts to each individual case and the final determination as to who is and who is not entitled to benefits or subject to disqualification.

Certainly if the performance of this function of the Commission is to be successfully attacked, it is respondents' burden adequately to establish the Commission's error. The record as it now stands neither shows the names of the claimants nor their number. Nor does it show the number of jobs available in 1939 nor the number which would have been available in 1940 if there had been no dispute. The record shows that with respect to the Alaska Salmon Company there were approximately 300 individuals employed in 1939 (R. 15-25), but it does not show how many or if any of these persons filed claims. The record does show, however, that the Alaska Packers Association employed about 1000 individuals in 1939 and planned to employ in 1940 about two-thirds of this number (R. 541). It also shows that the Red Salmon Canning Company planned to take as many, if not more, men for the 1940 operation than in 1939 (R. 567). The record does not show how many of the 1939 employees of the Alaska Packers Association were ready or available to go in 1940, or how many applied for unemployment insurance, nor does it show how many men were employed by the Red

Salmon Canning Company in 1939 or were available to go in 1940.

Notwithstanding that the record is silent on the subject, we have been advised by the Commission that approximately 725 persons applied for compensation, of which approximately 588 were approved for compensation subject to the disqualification, and of this number approximately 486 have received compensation after the expiration of the two weeks' and eight weeks' periods.[21] If we estimate, on the scanty record showing, that there were some 1600 cannery workers employed in Alaska by these employers in 1939, which we believe to have been the case, it is apparent that approximately half of them were available at the commencement of the 1940 season, and therefore whether or not one or more of the employers would have curtailed their operations, there would have been plenty of jobs for all those who applied. It may be assumed that because of the long layoff season a number of the 1939 employees found other jobs, as is generally the case. It would, therefore, appear that the Commission's findings were well justified, but whether these facts and figures are correct or not, the burden, we contend, is respondents' to establish that the Commission erred if such is the case.

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[21] At the taking of the testimony in San Francisco, no one knew who or how many the claimants were and reference to this subject was made on several occasions. When Mr. Oliver, attorney for the Alaska Salmon Company, objected because he didn't "know yet what the Claims are or who the Claimants were," the attorney for the respondents stated that he could get them from the Commission (R. 600). Neither the number of claimants nor their names are contained in the record. We suspect and the record indicates that additional unemployed cannery workers continued to file claims and that the 725 include many who filed claims long after this appeal was perfected.

3. RESPONDENTS' AUTHORITIES.

Respondents' authorities may be classified in the following categories:

The first category includes cases like *Phillips Co. v. Walling*, supra, which support the general proposition that a remedial statute should be liberally construed with respect to coverage and exemptions. These cases will be found on pages 6 to 9, inclusive, of respondents' brief.

The second category includes such cases as *Labor Board v. Jones & Laughlin*, 301 U.S. 1, 81 L.Ed. 893, 57 S.Ct. 615; *Associated Press v. Labor Board*, 301 U.S. 103, 81 L.Ed. 953, 57 S.Ct. 650; *Labor Board v. Mackay Co.*, 304 U.S. 333, 82 L.Ed. 1381, 58 S.Ct. 904; *Labor Board v. Sands Mfg. Co.*, 306 U.S. 332, 83 L.Ed. 682, 59 S.Ct. 508; *United States v. Hutcheson*, 312 U.S. 219, 85 L.Ed. 788, 61 S.Ct. 463, and *Drivers' Union v. Lake Valley Co.*, 311 U.S. 91, 85 L.Ed. 63, 61 S.Ct. 122.[22] These cases uphold the proposition that the term "labor dispute" should be accorded the fullest scope under the statutes involved in these cases, a proposition with which, of course, we agree.

The third category includes such state court cases as respondents cite to support their argument and which may be listed as follows:

> *Graham v. State Unemployment Comm. of Oregon* (Circ. Ct. Oregon, 4th Jud. Dist.), C.C.H. Unemployment Insurance Service, Oregon, par. 1980.02, former par. 8030, Sept. 2, 1940,

a clear case of discharge by the employer, obviously involving involuntary action on the part of the discharged

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[22]See Res. Br. pp. 12 to 13, incl.

employees. We believe every state act would give such employees benefits.

Bonner v. Unemployment Compensation Board of Review (Superior Ct. Pa.), 156 Pa. Super. 367, 40 Atl. (2d) 106,

where the court reversed the Commission for the sole reason that work was unavailable to the men due to the company's failure to furnish jobs.

United States C. Co. v. Unemployment C. Bd. of Review (Ohio Court of Appeals), 66 Ohio App. 329, 32 N.E.(2d) 763, 135 A.L.R. 927,

where the disqualification obviously did not apply and the language is quite different from the language of the Alaska Act.[23]

Bunny's Waffle Shop v. Cal. Emp. Com., 24 Cal. (2d) 735, 151 P. (2d) 224,

where the court expressly holds that the unemployment was due to affirmative economic action taken by the employers whereby the employees were thrown out of work involuntarily. There the labor dispute had been continuing for some time but the employees continued working. Although no dispute existed as to wages, the employers suddenly reduced wages 25 per cent and imposed other less favorable working conditions as an economic weapon to force the employees of different employers to bargain collectively under a master agreement. The California

[23]In Ohio the act under which respondents' cases were decided has been amended to broaden the scope of the disqualification. In Pennsylvania the regulations under which respondents' cases were decided have been superseded by new regulations which do not limit the scope of the disqualification as did the former regulations.

court held that the employees had left their work because of the unfair economic action of the employer and not because of the trade dispute. The obvious implication under the California decision is that if the men had left their work because of an inability to agree upon the bona fide issues of the dispute, the disqualification would properly have applied.[24]

The fourth category includes numerous rulings of unemployment commissions available only in the reporting services. The brevity of the note describing the case contained in the service, the summation of the agency's finding, and the general looseness of the reporting makes it impossible to evaluate these decisions or to make any authoritative statement about them. Most of the references in respondents' brief as to where these authorities may be found are to the Commerce Clearing House Unemployment Insurance Service, and with respect to several cases an obsolete reference is given because the case has been dropped out of the current service presumably because the editor regarded the case as no longer authoritative.[25] Respondents have drawn heavily on agency decisions with respect to miners out of work in the coal industry, but the reports of these cases indicate that in no single instance are the facts in any way comparable to

[24]These cases will be found on pages 15 to 18, inclusive, and on page 28 of respondents' brief.

[25]Such instances include the *Indiana Unemployment Commission* case, cited on page 22 of respondents' brief, the second *Michigan Unemp. Comp. Comm.* case cited on page 27 of respondents' brief, from both of which cases respondents quote, and the *Pennsylvania Unemployment Commission* case, cited at page 15 of respondents' brief.

the facts involved here. In one case[26] benefits were allowed only from the time the labor dispute was settled until the employer reopened his plant, and benefits were denied while the labor dispute was in progress. In other cases[27] claimants were laid off for economic reasons, while work would normally have been available, prior to the commencement of the labor dispute, and the unemployment was held to be due to the layoff and not to the subsequent labor dispute. In another case[28] unemployment benefits were allowed during the nonoperating season notwithstanding the existence of a labor dispute, because, regardless of the labor dispute, work would not have been available in any event, and this the agency properly held was the cause of the unemployment.[29]

Respondents also cite a type of case[30] where employees are out of work due to a labor dispute between the employer and another union. This problem is not involved here and in many instances is decided, as presumably was

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[26] *West Virginia Appeal Tribunal*, Dec. No. AT-652; Affirmed by Board of Review Dec. No. 155; C.C.H. Unemployment Insurance Service, West Virginia, par. 1980.03, Aug. 30, 1939 (Res. Br. p. 23).

[27] *Indiana Appeal Tribunal*, No. 39-LD-6, 7, 9, 10, 11, C.C.H. Unemployment Insurance Service, Indiana, par. 1980.02, former par. 8066.06, April 10, 1939 (Res. Br. p. 26).

[28] *Michigan Unemp. Comp. Comm.*, Ref. Dec. No. 1589, C.C.H. Unemployment Insurance Service, Michigan, par. 8049.06 (old) (Res. Br. p. 27).

[29] Under the Michigan statute employees in seasonal industries are eligible for benefits at any time without regard to the season (C.C.H. Unemployment Insurance Service, Michigan, par. 2000). Most state acts which have dealt with the matter of seasonal industries restrict seasonal wage credits to unemployment occurring only during the seasonal period (C.C.H. Unemployment Insurance Treatise, par. 2000).

[30] *Indiana Unemployment Commission, Appeal Tribunal*, No. 39-LD-51, C.C.H. Unemployment Insurance Service, Indiana, par. 8076.34 (old) (Res. Br. p. 22).

done in the case cited, by determining whether the employees are prevented by violence from going through the picket line, in which case they are not disqualified, or whether they sympathetically refuse to go through a picket line, in which case benefits are denied on the theory that the employees adopt the dispute as their own.

E. CONCLUSION.

It is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

Dated, San Francisco, California,
October 2, 1946.

Respectfully submitted,
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(Appendix Follows.)

Appendix

Excerpts from Senate Finance Committee Report No. 628 to accompany H. R. 7260 (which became the Social Security Act):

"The essential idea in unemployment compensation is the creation of reserves during periods of employment, from which compensation is paid to workmen who lose their positions when employment slackens and who cannot find other work. Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis, but only while the worker is involuntarily unemployed. * * * Payment of compensation is conditioned upon continued involuntary unemployment. Beneficiaries must accept suitable employment offered them or they lose their right to compensation" (p. 11).

"Against the tax a credit is allowed up to 90 per cent of the tax for contributions to State unemployment compensation funds, which are established under laws which meet the conditions prescribed in section 903. These conditions do not prescribe what sort of unemployment compensation laws the States shall enact; they are intended merely to make certain that the States actually have unemployment compensation laws, rather than mere relief measures" (p. 12).

"Except for a few standards which are necessary to render certain that the State unemployment compensation laws are genuine unemployment compensation acts and not merely relief measures, the States are left free to set up any unemployment compensation system they wish, without dictation from Washington" (p. 13).

"Unemployment compensation will not completely eliminate the necessity for unemployment relief. To the extent, however, that unemployment reserves are accumulated, they will reduce the necessity for relief. In normal periods, unemployment compensation will provide a sufficient safeguard for most of the unemployment that will occur, and in depression periods, will very materially reduce the burden of relief costs" (pp. 15-16).

"Should the establishment of unemployment compensation funds be delayed, the reserves which will be available when the next crisis comes will be correspondingly lessened and the burden of relief costs increased" (p. 16).

Excerpts from Report of the Committee on Economic Security submitted to the President of the United States in January, 1935:

"Unemployment compensation, as we use this term, includes both unemployment insurance and unemployment reserves. It is a device through which reserves are accumulated during periods of employment to be paid out in periods of unemployment" (p. 8).

"Benefits from unemployment-insurance funds are payable only for involuntary unemployment which is not due to the employee's own misconduct. An employee who is discharged or laid off is required to register at his nearest employment office, but draws no benefits during a specified waiting period" (p. 9).

"To encourage efficient administration, without which unemployment insurance will fail to accomplish its purpose, we believe that the Federal Government should aid the States by granting them sufficient

money for proper administration, under conditions designed to insure competence and probity" (pp. 15-16).

"*Willingness-to-work test.*—To serve its purposes, unemployment compensation must be paid only to workers involuntarily unemployed. The employees compensated must be both able and willing to work and must be denied benefits if they refuse to accept other suitable employment. Workers, however, should not be required to accept positions with wage, hour, or working conditions below the usual standard for the occupation or the particular region, or outside of the State, or where their rights of self-organization and collective bargaining would be interfered with" (p. 18).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 25

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA; NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as members of and constituting said Commission; and ALASKA PACKERS ASSOCIATION (a corporation); ALASKA SALMON COMPANY (a corporation), and RED SALMON CANNING COMPANY (a corporation), *Petitioners*,

v.

FRANK L. ARAGON, and other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL NO. 5, on behalf of Applicants, *Respondents*.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 309.

UNEMPLOYMENT COMPENSATION COMMISSION OF THE TERRITORY OF ALASKA; NOBLE DICK, R. E. HARDCASTLE and R. S. BRAGAW, as members of and constituting said Commission; and ALASKA PACKERS ASSOCIATION (a corporation); ALASKA SALMON COMPANY (a corporation), and RED SALMON CANNING COMPANY (a corporation), *Petitioners,*

v.

FRANK L. ARAGON, and other Applicants, Members of Alaska Cannery Workers Union Local No. 5, and ALASKA CANNERY WORKERS UNION LOCAL No. 5, on behalf of Applicants, *Respondents.*

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENTS.

STATEMENT OF THE CASE.

The question presented to this Court, as in the various hearings below, is this: *Were Respondents unemployed during the 1940 Alaska salmon season due to a labor*

dispute in active progress at the factory, establishment, or other premises at which they are or were last employed within the meaning of Section 5(d) of the Alaska Unemployment Compensation Law? (Hereinafter called Act.) If they were not, then the decision of the Circuit Court must be affirmed.

All of the Respondents were employed as cannery workers by either Alaska Packers, Alaska Salmon, or Red Salmon (hereinafter called Employers) in Alaska during the 1939 salmon season. *When the 1939 season ended, the employment of each worker was finished, and he was separated from his employer's payroll as a result of the season's being at an end. Thereupon, the employer-employee relationship between them (within the meaning of the Act) terminated and was not resumed during the 1940 season.*

Respondents worked during 1939 under a contract between their Union (Alaska Cannery Workers Union, Local No. 5) and the Employers. That contract by its terms was to be renewed from year to year unless either party terminated it. In the fall of 1939 the Employers terminated the contract. (R. p. 267.)

Negotiations between the Union and the Employers commenced in March of 1939 and continued during that month and April, 1939. The Union submitted a contract which called for wage increases and other improvements over the 1939 contract. (R. p. 275.) The Employers rejected this. (R. p. 39.) The Employers offered the Union a contract which proposed wage reductions and other poorer conditions than were provided by the 1939 contract. (R. p. 39, 92-94, 333.) The Union rejected the Employers' proposal. The Union finally offered to re-execute the 1939 San Francisco contract. (R. pp. 40, 94-95, 106, 111, 139, 188, 254, 517, 518, 602-604.) The Employers refused. The Employers never at any time offered to re-execute the 1939 San Francisco contract. (R. pp. 84, 111, 139, 185, 333, 341, 524.)

On April 3, 1940, the Employers notified the Union that if an agreement were not reached by April 10, 1940, the Karluk expedition would be called off; and if no contract were reached by April 12, 1940, the Chignik operation would be called off. (R. pp. 325-326.) Those "deadline" dates came and passed without a contract, and the operations were called off, and the matter was at an end between the parties so far as these operations for 1940 were concerned. The parties never met again concerning them nor did they discuss these operations after the "deadline" dates fixed by the Employers. Negotiations were transferred to Seattle on April 1, 1940 (R. pp. 321, 333), and these negotiations resulted in an agreement for operating out of the Northwest to Alaska, but specifically excluded operating out of San Francisco. (R. p. 341.)

On April 26, 1940, the Employers notified the Union that unless an agreement were reached for the Bristol Bay operations by May 3, 1940, that operation would be called off. (R. p. 378.) *In the same letter, the Employers notified the Union that Alaska Salmon would not undertake any Bristol Bay operation during 1940.*

The May 3, 1940, deadline came and went without a contract for Bristol Bay, and the Employers called off that operation. After that date the parties, insofar as operations out of San Francisco were concerned, met no more and did nothing further with respect to Bristol Bay for 1940. The Bristol Bay season was called off by the Employers, as had been Karluk and Chignik, and that was that. The subsequent negotiations in Seattle applied only to operations out of that port.

It should be noted that the Commission by Benefit Regulation No. 10 (R. pp. 199, 201) had fixed the

Karluk season: April 5th-September 5th;
Chignik season: April 1st-September 10th;
Bristol Bay season: May 5th-August 5th.

Negotiations terminated on, and neither party did anything further with respect to 1940 operations at the respective areas after the following dates:

Karluk: April 10, 1940;
Chignik: April 12, 1940;
Bristol Bay: May 3, 1940.

At the Referee's hearing it was testified to, and it is not denied, that the Union and the Respondents never called a strike against, nor were they on strike against the Employers during 1940. (R. pp. 602-605.) Obviously, the Respondents never went to Alaska. The operations were never started during 1940. There was no operation to be interrupted by either strike or picket line.

The Respondents testified that they were willing and able to work at any time during 1940 in Alaska on the same basis that they worked in 1939. (R. pp. 84-85, 116, 178, 186, 260, 602-605.) However, no work was made available by the Employers to the Respondents on the basis of the 1939 San Francisco agreement. In fact, no work was made available to Respondents by the Employers for 1940.

Referee Roden found that a "labor dispute" existed, but that *it was not in active progress* at Karluk after April 10, 1940, nor at Chignik after April 12, 1940, nor at Bristol Bay after May 3, 1940, and that *accordingly claims filed for unemployment benefits after those dates should be allowed.*

The Commission and the District Court found that there was both a "labor dispute" and that it was "in active progress" during the entire 1940 season, and accordingly denied Respondents benefits for the eight week period provided by Section 5(d). The Circuit Court reversed the District Court upon the ground that if there were a labor dispute in active progress, it was not "at the factory, establishment or premises" at which Respondents are or were last employed, and therefore Respondents were not

disqualified for benefits within the strict language of the Act.

Respondents assert that (1) there was not a "labor dispute" within the meaning of the Act and therefore they were not at any time disqualified for benefits, but (2) that if there were a "labor dispute" it was not in "active progress" after the dates and for the reasons stated in Referee Roden's decision, (3) that if there were a labor dispute in active progress, it was not "at the factory, establishment or other premises at which they are or were last employed," and (4) their unemployment was not "due" to a labor dispute.

SUMMARY OF ARGUMENT.

I.

The Act, being remedial in nature, is to be liberally construed and with a view toward awarding, rather than denying, benefits. Exemptions from the benefits of the Act must be strictly construed.

II.

Before a claimant can be disqualified under Section 5(d) of the Act, *all* of the factors of disqualification must be clearly present.

III.

There was not a "labor dispute" within the meaning of Section 5(d) of the Act.

IV.

There was not a labor dispute in "active progress" in this case.

V.

There was not a labor dispute in active progress "at the factory, establishment or other premises" where Respondents "are or were last employed."

VI.

Respondents were not unemployed "due" to a labor dispute at the factory, establishment, or other premises where they are or were last employed.

ARGUMENT.

I.

The Act, being remedial in nature, is to be liberally construed and with a view toward awarding, rather than denying, benefits. Exemptions from the benefits of the Act must be strictly construed.

This is true of all unemployment compensation acts. The rule is stated in

Danzer v. *State Unem. Comm. of Oregon* (Circ. Ct. Oregon, County of Multnomah), C.C.H. Unemp. Ins. Service, Oregon #1980.001, former #8031, 1940:

> "The general purposes of the statute should be kept in view in construing its provisions. This is distinctly a remedial statute. It is an old rule, and one of universal acceptance, that a remedial statute should be liberally construed so as to suppress the mischief and advance the remedy. * * * Exceptions or exemptions to such a remedial statute should be strictly construed. * * * Where * * * workmen suffered enforced unemployment, they should be entitled to benefits unless they clearly fall within an excepted class. * * * If the real cause of the closure be in doubt, that doubt, under the liberal rule in relation to remedial statutes, ought to be resolved in favor of the workmen for whose relief the statute was enacted."

The Act itself declares its beneficent public policy:

> "Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this Territory. Involuntary unemployment is

> therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be accomplished by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment from which benefits may be paid for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The Legislature, therefore, declares that in its considered judgment the public good, and the general welfare of the citizens of this Territory, require the enactment of this measure, under the police power of the Territory, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own." (R. pp. 708-709.)

The Court below announced this rule (149 Fed. (2d) 446, at p. 448) and this Court has declared the law so to be, *A. H. Phillips, Inc.* v. *Walling*, 324 U. S. 490, 89 L. Ed. 705, 65 S. Ct. 807, in a case involving the Fair Labor Standards Act where the same rule of statutory construction applies.

The Supreme Court of California (the state of residence of the Respondents) has held similarly concerning the California Unemployment Insurance Act (Deering's General Laws, (Calif.) Vol. 3, Act. 8780d), in the case of *California Employment Commission* v. *Los Angeles Downtown Shopping News Corp.*, 24 Cal. (2nd) 421, at p. 427,

> "It is a remedial statute and as such must be liberally construed for the purpose of accomplishing its objects."

The Alaska Act, the California Act, the Oregon Act, in fact all of the state and territorial acts, were adopted in conformity with the federal Social Security Act (Act of August 14, 1935, 49 Stat. 620, *et seq.*, as amended, 42 U. S. C. A. Secs. 301-1321, and particularly 49 Stat. 626, *et seq.*,

as amended, 42 U. S. C. A. 501-503), with a national objective on the part of Congress and the several states and territories to alleviate the distress and economic hardship which arose from widespread unemployment. These laws met the challenge of unconstitutionality in this Court, *Charles C. Steward Machine Co.* v. *Davis*, 301 U. S. 548, 81 L. Ed. 1279, 57 S. Ct. 883; *Helvering* v. *Davis*, 301 U. S. 619, 81 L. Ed. 1307, 57 S. Ct. 904.

Mr. Justice Cardozo, speaking for the Court in the former case, stated the reason for the law, 301 U. S. at p. 586,

> "During the years 1929 to 1936, when the country was passing through a cyclical depression, the number of the unemployed mounted to unprecedented heights. • • • The fact developed quickly that the states were unable to give the requisite relief. The problem had become national in area and dimensions. There was need of help from the nation if the people were not to starve."

Similarly, a broad view is taken of who are employees within the meaning of the Social Security Act, so that coverage will be as extensive as possible. The rule is stated in *Willard Sugar Co.* v. *Gentsch*, 59 Fed. Supp. 82, at p. 83,

> "It is evident to this court that it was the intent of the act to provide security for all who are dependent for their livelihood upon obtaining work from others, rather than upon earning a living in their own business ventures, subject, of course, to the exceptions delineated in the statute.
>
> "That is the plain implication of the statement as to the Congressional intent reflected in the report of the House Ways and Means Committee, at the time of the enactment of the 1939 amendments to the Social Security Act (H. Rep. No. 728, 76th Cong., 1st Sess., p. 76), wherein it was stated: 'A restricted view of the employer-employee relationship should not be taken in the administration of the Old Age and Survivors Insurance system in making coverage determinations. The tests for determining the relationship laid down in cases relating to tort liability and to the common law conception of master and servant should not be narrowly applied . . .'

> "From this language it is apparent that the framers of the act planned to extend the benefits of the legislation to as wide a class as could be comprehended within the meaning of the term employee, rather than to limit it to narrowly restricted definitions . . ."

Exempt employment is strictly construed. Thus in a case where it was sought to exclude from the coverage of the Social Security Act persons who were claimed to be exempt agricultural workers, the law is that the exemption must be strictly construed with the view of making the Act's coverage as broad as possible. In *Latimer* v. *United States*, 52 Fed. Supp. 228, at p. 234, the Court states:

> ". . . a realistic approach to the social and economic security of employees in present-day large scale enterprises of all kinds requires that all doubt in construing remedial statutes providing unemployment insurance and old age protection and containing tax impositions should favor coverage rather than exemption. Of course the ordinary and generally accepted meaning of language used in the statute and in valid interpretative regulations of the statute cannot be ignored. Revenue raising is not the sole purpose in such legislation and the rule of strict construction in favor of the taxpayer is not applicable . . ."

The Alaska Act, and these Respondents and their welfare, must be considered in the light of this philosophy. The undisputed facts are these. The men were unemployed. The end of the last season left them jobless. They did not leave present employment. They were not on strike. The employers terminated the contract of the previous year. The men offered to work on the same conditions and wages they enjoyed the previous year. The employers refused. The employers would provide work for the men only on worse conditions and lower wages. The men refused.

To hold under these circumstances that Respondent's unemployment was "due to a labor dispute in active progress at the place of last employment" would be a plain perversion of the Act. It would mean that the Act (denial of its

benefits) could be used to depress wages and conditions. This certainly would not be serving the remedial purpose of this statute. Its object should be as much to maintain existing economic standards (wages and conditions) as to prevent the hardships that flow from unemployment. Why should workers have to suffer wage cuts and poorer conditions in order to receive the benefits of an Act passed for their protection?

Under the Alaska Act, even if employees are disqualified on account of a labor dispute, that disqualification under Section 5(d) is limited to eight weeks. In many of the states, the limitation in time is even less. The reason for these limitations is that the statistical record of labor disputes shows that the average one lasts about eight weeks. (R. p. 638.) Therefore, that was held to be the limit of the disqualification, at least in the Alaska Act, and the employees were entitled to benefits after that period of time even though a labor dispute existed, and continued. This time limitation on the denial of benefits convincingly demonstrates the intention of the Alaska Act, and the intention of almost all similar laws, to pay full benefits in all situations where there is any logical basis for payment.

Accordingly, benefits in this case should be paid unless there is no doubt at all that they should be denied. This is not a private insurance carrier at the bar of this Court whose approach to payment of claims is that the burden is upon a claimant to prove his eligibility. Rather, we have a public agency administering a remedial statute whose guiding standard is to pay the claims unless it clearly appears that an exemption exists. The burden is upon the Commission to disprove eligibility, not upon the claimant to prove it.

II.

Before a claimant can be disqualified under Section 5(d) of the Act ALL of the factors of disqualification must be clearly present.

It is not only the rule as previously expressed that an unemployment insurance act must be liberally construed in favor of paying benefits, but also *all* of the factors of disqualification as provided by the Act must be clearly present before benefits can be denied. Thus, if *any* factor of disqualification is absent, then the claim must be paid. The rule that exceptions from benefits must be strictly construed requires this conclusion.

Thus, under the Alaska Act, a claimant cannot be disqualified for any week, unless it appears *with respect to such week,*

(1) that there is a *"labor dispute"*,

(2) in *"active progress"*,

(3) *"at* the factory, establishment, or other premises at which he is or was *last employed"*,

(4) and that his unemployment is *"due"* to a labor dispute.

See Fierst & Spector, *Unemployment Compensation in Labor* Disputes, 49 Yale Law Review 461 (January, 1940).

If *any one* of these *four elements* is lacking for *any week* during which a claimant is unemployed and claims benefits, he must be awarded benefits for that week. If there is *any doubt* on *any one* of these points, it *must be resolved in favor of* claimant.

III.

There was not a "labor dispute" within the meaning of Section 5(d) of the act.

Certainly there was a "dispute" between the Union and Employers over the terms of the 1940 contract, but it was not a "labor dispute" within the meaning of the Act. The

term "labor dispute" means different things according to different situations in which it is used. *Cf. Willard Sugar Co.* v. *Gentsch, supra.* In the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. A. Secs. 151-166) and the Norris-LaGuardia Act (Act of March 23, 1932, 47 Stat. 70, 29 U. S. C. A., Secs. 101-115) it means what those acts define it to mean, and we agree with those definitions. But both of those Acts, as this one, were enacted for the benefit of workers. The Wagner Act was passed to protect the right of collective bargaining and self-determination in the matter of employee representatives. The Norris-LaGuardia Act was passed to limit the issuance of injunctions against workers. Obviously a broad definition of "labor dispute" is appropriate in those acts.

The policy behind the Wagner Act is declared in the law (29 U. S. C. A. Sec. 151):

> • • • "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid and protection."

The courts and this Court have given effect to that declared policy. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 81 L. Ed. 893, 57 S. Ct. 615; *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 81 L. Ed. 953, 57 S. Ct. 650.

The term "labor dispute" is accorded the fullest scope. *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 82 L. Ed. 1381, 58 S. Ct. 904; *National Labor Relations Board* v. *Sands Mfg. Co.*, 306 U. S. 332, 83 L. Ed. 682, 59 S. Ct. 508. These and numerous other cases have afforded workers the protection of the Wagner

Act in "labor disputes" against the contentions of employers that no labor disputes existed.

Similarly, the public policy that compelled the enactment of the Norris-LaGuardia Act gave recognition to the right of workers to self-organization and full freedom of association and required "limitations upon the jurisdiction and authority of the courts of the United States" (29 U. S. C. A. Sec. 102). This public policy has been given effect and the term "labor dispute" broadly defined by the decisions of this Court. *United States* v. *Hutcheson*, 312 U. S. 219, 85 L. Ed. 788, 61 S. Ct. 463; *Milk Wagon Drivers' Union, etc.* v. *Lake Valley Farm Products*, 311 U. S. 91, 85 L. Ed. 63, 61 S. Ct. 122.

The reasons underlying the necessity for this law were cogently stated in Frankfurter & Green, *The Labor Injunction*, (MacMillan, 1930) at p. 200:

> ". . . The history of the labor injunction in action puts some matters beyond question. In large part, dissatisfaction and resentment are caused, first, by the refusal of courts to recognize that breaches of the peace may be redressed through criminal prosecution and civil action for damages, and, second, by the expansion of a simple, judicial device to an enveloping code of prohibited conduct, absorbing, en masse, executive and police functions and affecting the livelihood, and even lives, of multitudes. Especially those zealous for the unimpaired prestige of our courts have observed how the administration of law by decrees which through vast and vague phrases surmount law, undermines the esteem of courts upon which our reign of law depends. Not government, but 'government by injunction', characterized by the consequences of a criminal prosecution without its safeguards, has been challenged. . . ."

It is apparent that the term "labor dispute" requires the broadest possible definition in order to effectuate the purposes and policy of these laws.

However, in our case we have a different situation. In the first place, there is no definition of the term "labor dispute" in the Alaska Act. If that term were to have the

same meaning here as it does in the Wagner and Norris-LaGuardia Acts it is fair to assume that the Territorial Legislature would have so declared. The fact that the Legislature was silent on what the term "labor dispute" means does not require a conclusion that its meaning is the same as in the two former statutes. It must be remembered that these federal Acts were passed to meet particular situations and for the protection of workingmen. The Congress, therefore, expressly wrote broad definitions of the term "labor dispute".

The Alaska Act, also, was passed for the benefit and protection of workingmen. Participation in a "labor dispute" causes disqualification, and we have already noted that any exception is strictly construed. Therefore it is logical and correct to conclude that in this Act the term "labor dispute" (which is not defined) must be given the narrowest possible meaning in order to award rather than deny benefits.

In other words, we think it is a fair construction of the Alaska Act to say that the term "labor dispute" means a *strike* or the *leaving of employment* by workers pursuant to a dispute between their union and the employer over wages, conditions, representation, or some other clearly recognized employer-employee controversy.

The unemployment compensation acts provide benefits to workers who are unemployed because *there is no suitable employment available to them.* The "labor dispute" disqualification was inserted in the Act so that unemployment funds would not support a *strike or work stoppage* declared by workers. Generally, there is no "labor dispute" within the meaning of the unemployment compensation acts unless there is a strike or stoppage, or leaving of employment, or a presently existing employer-employee relationship which is terminated as the result of some difference between the parties over wages, hours, conditions of work, representation, etc.

In our case, of course, there was no presently existing employer-employee relationship at the commencement of the

1940 season. That relationship was terminated by the closing of the 1939 season. All that occurred after the close of the 1939 season were negotiations between the Union and the Employers which did not culminate in a contract for 1940, and the Employers abandoned the 1940 season. These facts do not constitute a "labor dispute" under an employment compensation act.

Several decisions of unemployment commissions and courts in various states may be helpful on this point:

Pennsylvania Unemployment Commission, Appeal No. B-44-5-372, C. C. H. Unemp. Ins. Service, Pa. #1980.013, former #8057.04, Aug. 29, 1940.

Claimant was engaged at flat wage to prepare new vein of coal for contract work, during which time union and employer negotiated for contract rate on new vein. Claimant notified by union to stop work which he did. Claimant asked for other work which employer failed to furnish and claimant left work. Held: Claimant not disqualified account labor dispute. *Negotiations were amicable and no overt act was committed by either part . . The bargaining did not constitute a labor dispute.* Claimant's unemployment is due to completion of contract job. (Our italics.)

So in our case, *the negotiations were not a labor dispute,* but were merely an attempt to get a contract for work which never started. Neither the negotiations, nor the failure to reach a contract, nor the ensuing abandonment of the 1940 season caused a labor dispute to occur where there was none. There was no overt act committed here. There was no strike. There was no job to strike. There was no stoppage and no leaving of employment. The Respondents just did not get employment for 1940. However the matter is viewed, there was not a labor dispute within the meaning of the Act.

Graham v. *State Unemployment Comm. of Oregon* (Circ. Ct. Oregon, 4th Jud. Dist.), C. C. H. Unemp. Ins. Service., Ore. # 1980.02, former # 8030, Sept. 2, 1940.

Claimants were members of C.I.O. who refused to join A.F.L. At insistence of A.F.L., employer discharged claimants when they refused to join A.F.L. Held: Not labor dispute within meaning of Unemployment Compensation Act.

If it be held that unemployment on account of a jurisdictional dispute as in the *Graham* case does not allow a labor dispute disqualification, that is persuasive authority to reject the disqualification in our case. Obviously, the Oregon Court allowed benefits because the men insisted on their right to belong to a union of their own choosing rather than change unions and remain working. It is equally clear that the men could have remained at work if they had changed unions. The Court found that the Act could not be used to compel a man to belong to a union he did not want to join.

A case similar to ours is considered and benefits allowed in an appeal to the Pennsylvania Unemployment Commission in the following case.

Pennsylvania Unemployment Commission, Appeal No. B-44-6-RH-454, C. C. H. Unemp. Ins. Service, Pa. #1980.016, Sept. 25, 1942.

". . . In determining whether or not the suspension of work shall be deemed voluntary by the employees or the employer, consideration shall be given to whether the employees or the employer sought some new advantage not previously existing, sought to add to or detract from the existing employment relationship, or attempted to interject into the prevailing arrangement some new term or terms as a condition of continuing work. If the employer insists upon some new conditions of employment and will continue operations only if same are accepted by the employees, the suspension following the employees' refusal to accept such conditions will be deemed to have been taken at the initiative of the employer, and this, involuntarily on the part of the employees. Conversely, if the employees insist upon some change in the conditions of employment and will continue working only if same are accepted by the employer, a suspension following the employer's re-

fusal will be considered voluntary on the part of the employees. Thus, it must be held that a claimant's unemployment during weeks in which he and other employees were on strike because of the employer's refusal to continue to pay 'yardage' for the removal of certain coal and rock, was not due to a voluntary suspension of work resulting from an industrial dispute where the employer had been paying for such work for a period of several years. The practice of paying for such work had become a prevailing condition of the employment. Therefore when the employer insisted upon a change with reference to payment for such work, the initiative in instituting the change in prevailing conditions lay with him, and the suspension following the employees' refusal to accept the change can not be deemed a voluntary suspension within the meaning of the law . . ."

Cf. Bonner v. *Unemployment Compensation Board of Review* (Superior Ct. Pa.), 156 Pa. Super. 367, 40 Atl. (2nd) 106,

where the matter started out as a refusal by the employees to work until certain conditions were met, but then the men offered to return to work, but the employer discontinued operations. It was held that this situation was not an industrial dispute within the meaning of the Act, and benefits were allowed.

So in our case, the Act cannot be used to force men to work on Employer's conditions. If Respondents had accepted what was offered them, they probably could have worked. They refused to accept less than they enjoyed in 1939. It does not seem to us that a remedial statute can any more be used to depress wages and conditions, than it can be used to compel men to join a union not of their own choosing.

United States Coal Co. v. *Unemployment Comp. Board of Review* (Ohio Court of Appeals), 66 Ohio App. 329, 32 N. E. (2nd) 763, 135 A. L. R. 927,

Contract between company and union terminated by its terms, March 31, 1939 and work in mines ceased that

day. Negotiations continued until contract reached May 12, 1939. Held: Benefits allowed between March 21-May 12, 1939. "Here there was no combined effort to stop work at a preconceived time. There was simply a conference attempting to work out an agreement between the interested parties. *The only contract between them had ended. No duty rested upon either the operators or the miners. The operators were under no obligation to keep the mines open. The miners were under no obligation to work. There was no contractual obligation*" (Our italics.)

While it is true that the disqualification under the Ohio statute exists only where there is a "strike", the language used in the above decision is persuasive in our case. As in the miners' case, so in ours, there was no contract and no duty resolved on either party. There were just meetings to try to reach a contract. But in the absence of a duty on the part of Respondents to work, and since they declared no strike, left no employment, and committed no overt act, we submit there was no labor dispute as contemplated by the Act.

In their brief, Appellants argue that various terms employed in the Alaska Act, including the term "labor dispute" have "no unvarying legal significance" and that the administrative determination, namely, that of the Alaska Unemployment Commission must be accepted as final in this case.

It should be evident from the cited cases, and just the logic of the case, that the term "labor dispute" has wide and varied meanings, depending on the sense and situation in which it is applied. The Act provides for Court review, and if the findings of fact made by the Commission are *supported by the evidence* then those findings and the conclusions of law based thereon shall be conclusive. In our case, however, the facts support and require exactly contrary findings and conclusions to those made by the Commission on whether a "labor dispute" existed. The Commission of-

fered no reasons for its decision. It just issued its fiat. The declaration of the Commission that the situation was a "labor dispute" is not sufficient to make it one.

The situation here calls for the determination of a question of law, namely, whether the undisputed facts which have been outlined above constitute a "labor dispute" within the meaning of the Act. That is the cardinal question presented to this Court, and one, we submit, which should be resolved in favor of Respondents.

IV.

There was not a labor dispute in "active progress" in this case.

Assuming for the sake of argument (but not admitting) that there was a "labor dispute", *we submit that it was not in "active progress" after April 10, 1940, at Karluk; after April 12, 1940, at Chignik; and after May 3, 1940, at Bristol Bay.* The dispute (if there was one) terminated on those dates with respect to each of those areas. The Referee's finding on this score is particularly eloquent and sound and we adopt his findings and argument (Referee's Decision, R. pp. 638-643):

> "The crucial question is: Did the labor dispute continue after these dates and, if so, when did it terminate, if it became terminated at all?
>
> A dispute, or other transaction, it would seem, continues in active progress when one or the other or both disputants, or parties to it, are active concerning it, not passive, when action is taken in relation to it and not when it is permitted to become dormant, for whatever may be the reason. In this case, nothing was done with the matters in dispute after the expiration of the respective dates mentioned, in fact there is a plain implication in announcing these dates that after their expiration no further efforts would be made to bring about an agreement and that the incident would be considered at an end, closed, and disposed of. And so it was treated by both parties. No action was taken by either of them to resume negotiations, no strike

was called by the Union nor did the Employers declare a lockout. Both parties ceased from doing anything concerning the situation.

If, as claimed by counsel for the Employers, the dispute continued at least as long as the 1940 season, we may ask: When did it end? Why limit it to the 1940 season? If the Employers were to decide in 1941 not to operate because no agreement was reached in 1940, would not the dispute then be held to be in active progress during that season also and the men remain unemployed on that account and, under the argument of the Employers would continue to remain unemployed until the Employers decided to commence operations again. Like Banquo's ghost, or John Brown's soul, the dispute would walk or march until the Employers saw fit to lay it low.

The Employers called off the 1940 operations and thereby put an end to the negotiations and the dispute which had raged between them and the Union. The operations having been abandoned, what was there to dispute about? The matter had become a closed incident—'a dead Horse' as the man in the street would say.

In the brief of counsel, numerous references are given to definitions of what constitutes a labor dispute, but none is found dealing with the precise point under consideration and it is fair to say there is none.

Cases are found in the books where miners, in the Appalachian Fields, had contracts with their employers similar in some respect to those entered into between the Union and the Employers in this case and it has been held in Tennessee, which has disqualifying provisions like the one found in our act and now under consideration, that coal miners, during a cessation of activities, were deemed unemployed because of a labor dispute in active progress when the employer and the Union could arrive at no agreement within a period set aside for negotiations and the mines were shut down and remained shut down up to the time of the hearing and they were held disqualified for benefits on account thereof.

These cases are readily distinguishable from the case at bar. In the Miners' case the operations were not seasonal and the dispute was carried on and continued

until the re-opening of the mines. In our case there was no possibility of a re-opening; the time to get ready to catch the fish which the Union was expected to put up had passed and the particular operation had on account thereof become impossible. There was here no time for reconsideration; the die was cast and the Rubicon crossed; there was no possibility of turning back the clock. Preparations for the 1940 operations, if to be carried on at all, were unalterably set to begin at a definite time fixed by the Employers. After that time, they became impossible of performance. The time having expired without reaching an agreement, the operations were called off, the negotiations terminated and the active progress of the labor dispute which had raged for a couple of months came to an end.

It is my opinion that the labor dispute ceased to be in active progress with reference to the Karluk situation on April 10th—five days after the opening of the annual season there; it ceased to be in active progress at the Chignik plant on April 12th—twelve days after the opening of the season there and it ceased to be in progress with reference to operations in Bristol Bay May 3rd—two days before the opening of the season there, as fixed by Benefit Regulation 10 promulgated by the Alaska Unemployment Compensation Commission and that claimants became unemployed after those dates, not account of the existence of a labor dispute in active progress but because there was no employment to be had at these places and that a disqualificaiton on account of the existence of a labor dispute in active progress, after the respective dates mentioned, is not justified under the facts as found and the law as I believe it to be. * * *

For the reasons hereinbefore stated, the Referee determines: * * *

Third: That at the time of the commencement of the season in Bristol Bay no labor dispute was in active progress at any of the plants operated in that District in 1939.

It follows that: * * *

Fourth: That the claims filed by any of the 1939 Karluk and Chignik employees after the respective

dates mentioned should be allowed; all of said claims to be subject to the statutory waiting period and other provisions of the Alaska Unemployment Compensation Law concerning eligibility to unemployment compensation of all or any of the claimants."

There are other unemployment cases which are persuasive authority leading to the conclusion that if there was a labor dispute in our case, it was not in "active progress." Some of these cases may be summarized as follows:

Graham v. *Oregon, supra.*

If there were a labor dispute, it was *not active* after employer acquiesced and laid off workers who refused to leave CIO and join AFL.

Indiana Unemployment Commission, Appeal Tribunal, No. 39-LD-51, C.C.H. Unemp. Ins. Service, Ind. #8076.34 (old).

Employees changed affiliation from X to Y union shortly before X union's contract with employer expired. Employer signed contract with Y union. X picketed and Y members prevented from working. Employer refused to negotiate with X because he had contract with Y. Held: Benefits allowed. "Where there is an impossibility of performance between the employer and the X Union, the Appeal tribunal will not hold that there is a dispute in active progress. *The fundamental principal of a dispute presupposes a settlement*, but where the settlement is impossible, the Appeal tribunal will not permit such impossibility to bar benefits to unemployed individuals." (Our italics.)

Similarly here, there was no way in which the Respondent's or their Union could settle the dispute after the Employers abandoned the season. Since settlement was rendered impossible by the Employers' abandonment of the season, Respondents became eligible for benefits at the time the impossibility arose.

Minnesota Appeal Tribunal, Dec. Nos. 1190, 1287, C. C. H. Unemp. Ins. Service, Minn. #1980.01, May 21, 1940.

Employer operating in receivership, authorized by Federal Court to sell assets, which it did while strike was in progress at its premises. Employer thereupon ceased doing business in Minn.

Held: Benefits allowed. Dispute ceased date of Court's order allowing sale of assets.

West Virginia Appeal Tribunal, Dec. No. AT-652. Affirmed by Board of Review Dec. No. 155; C. C. H. Unemp. Ins. Service, West Va. #1980.03, Aug. 30, 1939.

Claimants' disqualification account labor dispute held to terminate on reaching agreement, although plant did not reopen for 10 days thereafter in order to repair equipment.

So in our case, the ending of negotiations and the dropping of the matter by both parties, ended the dispute (if there was one), and any disqualification which existed prior to that time was thereupon at an end.

V.

There was not a labor dispute in active progress "at the factory, establishment or other premises" where respondents "are or were last employed".

Obviously there was no labor dispute in active progress at the plants or establishments where Respondents "are employed" for the simply reason that they had no employment at the time this case arose.

Therefore, any disqualification on this point must rest upon a labor dispute in active progress at the place where they were "last employed," namely, the previous, or 1939, season. A serious question is at once presented of whether the interim employment on the part of any of the Respondents would not serve to take them out of this disqualification, even if it were assumed to exist. As testified by various workers at the Referee's hearings, they took agricultural and other work in the states in the periods they

were not employed in Alaska. A convincing argument appears that no disqualification should attach to workers in a seasonal industry for participation in a labor dispute unless the seasonal work gets under way, and the workers leave that employment.

The question of whether a labor dispute was in active progress "at the factory, establishment or other premises" at which Respondents "were last employed," must be answered in the negative.

At the outset of the proceedings before the Referee, Respondents by their counsel urged that there should be no disqualification for benefits because there was not "a labor dispute in active progress *at the factory, establishment, or other premises at which the workers were last employed.*" (R. p. 30). This contention was recognized by the Referee in his consideration of the case. (R. p. 635). The Circuit Court found the point controlling. The Appellants rely upon Judge Healy's dissenting opinion that this point was not urged by Respondents, and assert the point was volunteered by the Circuit Court.

It would be more correct to say that Respondents did not rely primarily upon this point, but upon other points which are expounded at greater length in the earlier part of this brief. Nevertheless, the point was made, and has support in the record and in the law. Respondents made the point in their brief before the Circuit Court as follows:

> "The last times Appellants worked at any of the Employers' plants was in 1939. When the 1939 season ended, Appellants ceased to be employees of Employers. Work never started at any of the Employers' Alaska plants during 1940. It follows that there was no labor dispute at the place of last employment." (Respondents' Circuit Court Brief, p. 41, referred to at 149 Fed. (2nd) 453.)

It is true that Respondents' emphasis of this point is different from that of the Circuit Court. The Court says that there was no dispute *at* the *physical* place of last em-

ployment. We say that, but we also say that in a seasonal industry with no workers presently employed there *cannot* be a dispute *at* the *place* of last employment, but in order for a dispute to occur *at* the place of last employment work must get under way, and then the stoppage of work must occur *at* that place.

It follows that the dispute if there was one, and if it was in active progress, was not "at the factory establishment, or other premises" where Respondents "are or were last employed." That is clear because the employment which Respondents had with Appellants terminated at distant plants months before the dispute here occurred, and there could not be a labor dispute within the meaning of the Act unless that employment had actually been resumed at the plants in question, and then terminated by a labor dispute.

VI.

Respondents were not unemployed "due" to a labor dispute in active progress at the factory, establishment or other premises where they are or were last employed.

Respondents' unemployment was "due" to the seasonal nature of the industry and to the fact that their employment ended at the close of the 1939 season, and "due" also to the fact that the Employers tried to force wage cuts and worse conditions on the Respondents and thereby locked them out or prevented them from working.

Respondents never became re-employed for 1940. There was no guarantee that Respondents or any one of them would have had employment had a 1940 agreement been consummated.

It is admitted that Alaska Salmon Company called off its Bristol Bay season, and had reasons other than a failure to reach an agreement with the union for so doing. (See Mr. Oliver's stipulations, R. p. 589, to the effect that Alaska Salmon would not operate during 1940 under any conditions, even if agreement was reached, after sending letter

to Union under date of April 30, 1940, that this company had abandoned its 1940 operations. (See also Referee's Decision on this point, R. p. 633.) *It follows unquestionably that all workers employed in Alaska by Alaska Salmon in 1939 or entitled to benefits.* Any doubt as to the reason for unemployment must be resolved in favor of Respondents, and if other reasons than a labor dispute contributed to the unemployment, benefits must be paid. Therefore these Respondents must be paid.

Danzer v. *Oregon, supra.*

There was evidence that Alaska Packers would have employed one-third fewer men for 1940 on account of the curtailment. Inasmuch as it cannot be determined which one-third of the Alaska Packers' 1939 Bristol Bay employees would not be employed during 1940, had there been an operation in that area, the doubt must be resolved in favor of all who were employed there in 1939, thereby qualifying all of them for benefits under the rule of the *Danzer case.*

Some of the decided cases by various unemployment commissions that employment must be *"due"* to a labor dispute before disqualification attaches are as follows:

Danzer v. *Oregon, supra.*

Where there was evidence that closing of plants was due as well to belief by operators that decreased production was necessary to improve the market as to labor dispute, doubt resolved in favor of claimants and labor dispute disqualification disallowed.

Indiana Appeal Tribunal, No. 39-LD-6, 7, 9, 10, 11, C.C.H. Unemp. Ins. Serv. Ind. #1980.02, former #8066.06, April 10, 1939.

Worker laid off for lack of work prior to labor dispute. Held: Unemployment not due to labor dispute, even though worker is member of union and participated in dispute.

Same situation and ruling as in above case in following:

Iowa Appeal Tribunal, Dec. No. 39A-614-CM, C.C.H. Unemp. Ins. Serv., Iowa #1980.05, Nov. 29, 1939;
Kansas Unemp. Comp. Comm., Dec. No. 28, C.C.H. Unemp. Ins. Serv., Kansas #1980.01, 1939;
Oklahoma Comp. Comm. Board of Review, Dec. No. 51-AT-40, C.C.H. Unemp. Ins. Serv., Okla. #1980.01, Nov. 20, 1940;
Michigan Unemp. Comp. Comm., Ref. Dec. No. 4101, 7728, C.C.H. Unemp. Ins. Serv., Mich. #1980.07, 1940;
Massachusetts Unemp. Comp. Comm., Dec. No. 1358, Mass. A., C.C.H. Unemp. Ins. Serv., Mass. #1955.011, May 27, 1940.

The following case is in point in our situation:

Michigan Unemp. Comp. Comm., Ref. Dec. No. 1589, C.C.H. Unemp. Ins. Serv., Mich. #8049.06 (old):

Employer operates cooperative mine. All employees laid off at end of season. Immediately after seasonal lay-off employer became involved in labor dispute. Held: *Unemployment is due to seasonal lay-off, and not labor dispute regarding renewal of union contract which was to govern future.* (Our italics.)

Thus it will be noted that the unemployment commissions of the various states uniformly follow the rule that where there is a lay-off for lack of work or a season ending, even though the employer thereafter becomes involved in a labor dispute which prevents work resuming, the *unemployment is found to be due to the lay-off or season ending, and not the labor dispute, and benefits are paid accordingly.*

Finally, and an extremely vital and important point, the Employers in this case as we have noted tried to force wage cuts and worse conditions on the Respondents. Nowhere in the Record is there evidence of any offer on the part of the Employers to renew the 1939 agreement which they had terminated.

The workers and their union made numerous offers to renew the 1939 agreement. The Employers did not even offer the union a definite 1940 contract. The closest they

came is the offer reported in the Record at p. 333 to have the agreement reached for 1940 at Seattle, apply to the operations out of San Francisco.

The unemployment of Respondents was "due" to an Employer attempt to reduce wages and cut down conditions. In effect, the workers were "locked out" of the 1940 season. This is not a labor dispute as contemplated by the Act.

See *Bunny's Waffle Shop, Inc.* v. *Calif. Employment Comm.*, 24 Cal. (2d) 735, where the employer cut wages and the workers left their employment. Previously the workers, through their union, had refused to negotiate with the Employers' Association. In order to compel negotiations the employers cut wages and imposed other less favorable conditions than the workers had enjoyed. The Court held that a labor dispute was in progress, but that the workers unemployment was "due" to the employers' attempt to cut wages and worsen conditions, which constituted a lockout, and not due to a labor dispute.

The situation in our case is analogous to the cited case, and this point alone should be sufficient to support a decision in favor of Respondents.

CONCLUSION.

It is respectfully submitted that the decision of the Circuit Court should be affirmed, but that this Court should find that no labor dispute within the meaning of the Act occurred at the time in question, and that accordingly full benefits should be paid to all the claimants.

Dated at Washington, D. C., February 20, 1946.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 25.—October Term, 1946.

Unemployment Compensation Commission of the Territory of Alaska et al., Petitioners, v. Frank L. Aragan and Other Applicants, Members of Alaska Cannery Workers Union Local No. 5 et al., Respondents.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[December 9, 1946.]

The Chief Justice delivered the opinion of the Court.

In May, 1940, the individual respondents filed claims for unemployment benefits with the Unemployment Compensation Commission of the Territory of Alaska. After an initial determination by an examiner and after decision by a referee, the Commission held that the claimants were disqualified from receiving benefits for a period of eight weeks since their unemployment was due to a labor dispute in active progress within the meaning of the Alaska Unemployment Compensation Law.[1] The United States District Court affirmed the Commission's holding in all particulars. The Circuit Court of Appeals reversed, one judge dissenting. We granted certiorari because of the public importance of the questions involved.[2]

[1] Extraordinary Session Laws of Alaska, 1937, Chapter 4 as amended by Chapters 1 and 51, Session Laws of Alaska, 1939.

[2] The Alaska statute is part of the legislative scheme for unemployment compensation induced by the provisions of the Social Security Act of 1935. 49 Stat. 620, 626–627, 640. It is said that forty-three states and territories have provisions similar to those in the Alaska law disqualifying from unemployment benefits persons unemployed due to a labor dispute.

Among the petitioners are three corporations engaged principally in the business of salmon fishing, canning, and marketing. One of the companies owns canneries and other facilities at Karluk, Chignik, and Bristol Bay, Alaska. The other two companies operate only at Bristol Bay. Catching and canning salmon is a seasonal activity.[3] The companies customarily hire workers at San Francisco at the beginning of the season, transport them to the Alaskan establishments, and return them to San Francisco at the season's end. Similar operations are carried on by other companies out of other west coast ports, notably Seattle and Portland. The individual respondents are all members of the Alaska Cannery Workers Union Local No. 5, and each worked in Alaska for one of the three companies during the 1939 season. Local No. 5 is the recognized bargaining agent of the cannery workers in the San Francisco area.

In 1939, as had been the practice for some years, the union entered into a written agreement with the companies covering in considerable detail the matters of wages, hours, conditions of employment, and the like. After the end of the 1939 season, the companies terminated the agreement then in effect, which made necessary the negotiation of a new contract for the 1940 season. Consequently, on March 6, 1940, the companies through their authorized agent, Alaska Salmon Industry, Inc., invited the union to enter into negotiations for a new agreement. In a series of meetings held shortly thereafter, serious disagreement appeared which quickly developed into an impasse on the question of wages. The union demanded wages equal to or in excess of those paid under the terms of the 1939 agreement. The companies offered wages which for the most

[3] As provided by Benefit Regulation No. 10 of the Alaska Unemployment Compensation Commission, the season at Karluk extends from April 5 to September 5, at Chignik from April 1 to September 10, and at Bristol Bay from May 5 to August 25.

part were below those paid in 1939. On April 1, 1940, the union caused the negotiations as to the wage issue to be transferred from San Francisco to Seattle where an attempt was being made to effect a coastwide agreement to cover all west coast companies carrying on salmon operations in Alaska. Local No. 5, however, refused to sign a "memorandum" agreement incorporating such terms as might result from the concurrent Seattle negotiations.

On April 3, the companies notified the union that if operations were to be carried on in Karluk and Chignik during the 1940 season, an agreement with respect to the former would have to be reached by April 10 and with respect to the latter by April 12. Although negotiations proceeded up to the deadlines, the parties arrived at no understanding, and on April 22 Alaska Salmon Industry, Inc., formally announced that no operations would be carried on in Karluk and Chignik during 1940. Meetings continued, however, in an effort to come to an understanding with respect to Bristol Bay before the arrival of the May 3d deadline which had been set for those operations. Although federal mediators intervened in an attempt to discover a suitable compromise, the deadline date passed without agreement. It appears that after May 3, negotiations continued in Seattle where a contract affecting only canners and workers operating out of ports other than San Francisco was finally executed on May 29. The companies and union which are involved in this case were specifically excluded from the terms of the 1940 Seattle agreement.

Shortly after May 3, the individual respondents filed claims for unemployment benefits with the Alaska Unemployment Compensation Commission. The Commission, acting through an examiner, held that respondents were disqualified from receiving payments for the statutory period of eight weeks under the provisions of § 5 (d) of the Alaska law. At the time this case arose, that section

stated in part: "An individual shall be disqualified for benefits . . . (d) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute which is in active progress at the factory, establishment or other premises at which he is or was last employed; provided, that such disqualification shall not exceed the 8 weeks immediately following the beginning of such dispute . . ."

In pursuance of the appeal provisions of the statute,[4] respondents asked for a review of the examiner's determination. The Commission, in response to this application, appointed a Referee to pass on the disputed claims. The scope of the hearings was confined to the issue of whether the unemployment of the claimants was caused by the existence of a labor dispute. At the end of the proceedings, the Referee came to the conclusion that although there was a labor dispute in existence initially, the dispute was no longer "in active progress" after the passing of the dates fixed by the companies for consummation of the working agreements. Consequently, the disqualification under § 5 (d) with respect to each of the localities was held no longer to attach after the passage of the respective deadline dates.[5]

The Commission, on appeal,[6] reversed the Referee's decision and held that within the meaning of the Alaska law, a labor dispute was in active progress throughout the entire eight week statutory period of disqualification

[4] Section 6 (c) and § 6 (d). Chapter 1, Session Laws of Alaska, 1939.

[5] The Referee found that there had been unemployment due to a labor dispute in active progress at Karluk from April 5, when the season opened, to April 10, the deadline date, and at Chignik from April 1 to April 12. Since the deadline date with respect to Bristol Bay was set two days before the season opened there, the Referee found that there was no dispute in active progress at those plants.

[6] This procedure was in pursuance of § 6 (e) of the Act as amended by Chapter 1, Session Laws of Alaska, 1939.

beginning with the opening of the season in each locality. Consequently, no benefits were payable until the expiration of the disqualification period. The United States District Court affirmed the Commission's decision in all particulars.[7] The Circuit Court of Appeals, with one judge dissenting, reversed, however, on the ground that the labor dispute was not physically *at* the Alaska canneries where the individual respondents had been last employed.

We are met at the outset with the contention that the facts of this case do not present a "labor dispute" within the meaning of § 5 (d) of the Alaska Act. Respondents urge that the term must be narrowly construed to require a strike or leaving of employment which, in turn, calls for a presently-existing employment relation at the time the dispute arises.[8] According to this view, the term would not cover a situation, such as presented here, where the controversy precedes the employment. Respondents would justify this restricted construction on the ground that the Unemployment Compensation Law is remedial

[7] Section 6 (i) of the Act provides that within thirty days after the decision of the Commission has become final, any party aggrieved may secure judicial review in the United States District Court. The section states, "In any judicial proceeding under this Section, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law."

[8] A number of state courts in construing similar legislation have found "labor disputes" to have existed in situations where no contractual employment relation presently existed. Each of these cases involved a work stoppage in the interval between the expiration of an old labor contract and the consummation of a new agreement. *Miners in General Group* v. *Hix*, 123 W. Va. 637, 17 S. E. (2d) 810 (1941); *Ex parte Pesnell*, 240 Ala. 457, 199 So. 726 (1940); *Barnes* v. *Hall*, 285 Ky. 160, 146 S. W. (2d) 929 (1940); *Block Coal & Coke Co.* v. *United Mine Workers of America*, 177 Tenn. 247, 148 S. W. (2d) 364 (1941); *Sandoval* v. *Industrial Comm'n*, 110 Colo. 108, 130 P. (2d) 930 (1942).

legislation, and any provision limiting benefits under the Act should be narrowly interpreted.

The term "labor dispute", is not defined in the statute. The term appears in the Act in one other connection, however. Section 5 (c) (2) (A) provides that benefits under the Act will not be denied any individual, otherwise eligible, who refuses to accept new work "if the position offered is vacant due directly to a strike, lockout, *or other labor dispute*." The Social Security Act of 1935 [9] requires that the state or territorial law contain a provision to this effect before the legislation can be approved by the Social Security Board. Obviously, for the purposes of § 5 (c) (2) (A), the term, "labor dispute," has a broader meaning than that attributed to it by respondents. Unless the Territorial Legislature intended to give a different meaning to the same language appearing in another subdivision of the same section, the term must be given a broader meaning than that contended for by the respondents, for the purposes of § 5 (d) as well. We need not determine whether "labor dispute" must in all cases be construed as broadly as it is defined in the Norris-LaGuardia Act,[10] and the

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[9] 49 Stat. 640, 26 U. S. C. § 1603 (5) (A).

[10] 47 Stat. 70, 29 U. S. C. § 101. The Norris-LaGuardia Act contains the following definition: "The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." 47 Stat. 73, 29 U. S. C. § 113 (c). A number of state courts have found this and the similar definition in the National Labor Relations Act persuasive in their construction of the term appearing in unemployment compensation legislation similar to the Alaska Act. *Miners in General Group* v. *Hix*, 123 W. Va. 637, 17 S. E. (2d) 810 (1941); *Barnes* v. *Hall*, 285 Ky. 160, 146 S. W. (2d) 929 (1940); *Ex parte Pesnell*, 240 Ala. 457, 199 So. 726 (1940); *Sandoval* v. *Industrial Comm'n*, 110 Colo. 108, 130 P. (2d) 930 (1942). The Alabama legislature incorpo-

National Labor Relations Act.[11] But here there was full-scale controversy. Companies engaged in carrying on a seasonal business were ranged against a union representing seasonal workers who had been employed by the companies in the previous year. Dispute there certainly was; and the subject of that dispute consisted of matters usually contested in labor disputes as that term is normally understood.[12] Since we find nothing to indicate that the Territorial Legislature intended a contrary result, we conclude that the Commission might properly find a "labor dipute" here presented within the meaning of § 5 (d) of the Alaska Act.

We think that there is evidence in the record to support the Commission's conclusion that respondents' unemployment was "due" to a labor dispute insofar as that holding relates to the individual respondents employed in 1939 by the Alaska Packers Association and the Red Salmon Canning Company. At the hearings before the Referee the respondents attempted to establish that the companies called off their 1940 operations for reasons other than their inability to negotiate a satisfactory labor agreement. It was argued, for example, that the companies feared a poor catch as a result of governmental restrictions on fishing applicable to the 1940 season. The evidence adduced before the Referee indicates that both of the above-mentioned companies made extensive preparations for the 1940 operations. In anticipation, equipment and supplies of the value of several hundred thousand dollars were purchased. Ships were prepared and held in readiness for the

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rated the definition appearing in the Norris-LaGuardia Act into the Alabama unemployment compensation act. Ala. Code, Tit. 26 § 214 (A).

[11] 49 Stat. 449, 29 U. S. C. § 151.

[12] The Examiner, the Referee, the Commission, the District Court, and presumably the Circuit Court of Appeals all found a "labor dispute" to have existed, at least before the arrival of the deadline dates.

expeditions. The Referee found that these companies negotiated in good faith and failed to operate in Alaska during the 1940 season only because of their inability to negotiate satisfactory labor agreements before the passing of the deadline dates. There is evidence that the Alaska Packers Association expected to hire about two-thirds the number of workers in 1940 it had employed in 1939. But there is nothing in the record to establish that any of the claimants in this action would have been unemployed as a result of this contemplated curtailment in activity or if any of the respondents would have been affected, which of their number would have been unemployed. It appears that the Red Salmon Canning Company expected to use the same number of workers in 1940 as in 1939, or possibly a few more. Under these circumstances, we think that the Commission's finding that the unemployment was "due" to the labor dispute, should stand, insofar as it relates to the claimants indicated.

But a different situation is presented with reference to the respondents employed by the Alaska Salmon Company in 1939. That company has an establishment only at Bristol Bay. On April 30, three days before the deadline relating to the Bristol Bay operations, Alaska Salmon withdrew from the negotiations with the union and announced that it was unable to send an expedition to Alaska in 1940. The Referee found that the withdrawal was caused primarily by factors other than the company's inability to negotiate a satisfactory labor contract. At the hearings before the Referee, counsel for the company stipulated that even though the other companies had negotiated a labor agreement with the union before the deadline date, Alaska Salmon would have conducted no operations out of San Francisco in 1940 after its withdrawal from negotiations. We conclude that the record does not support the finding of the Commission that the respondents employed by the Alaska Salmon Company in 1939 were

unemployed "due" to a labor dispute at the establishment at which last employed.

Respondents urge that, assuming their unemployment was due to a labor dispute, there was no labor dispute in "active progress" within the meaning of the Act after the passage of the deadline dates. It is argued that when the expeditions were abandoned by the companies the dispute must necessarily have terminated since there was no possible way in which negotiations could have brought about a settlement. It should be observed, however, that the record does not reveal that negotiations abruptly terminated with the passing of the last deadline date. Conferences continued at Seattle in which both the companies and the union were represented. The respondents considered the negotiations sufficiently alive to make an offer of terms at least as late as May 29. Even if it be assumed that at some time within the eight week period of disqualification the point was reached when all possibility of settlement disappeared, it does not follow that the Commission's finding of a dispute in "active progress" must be overturned. Here, as in *Labor Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, 131 (1944), the question presented "is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially." To sustain the Commission's application of this statutory term, we need not find that its construction is the only reasonable one or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings. The "reviewing court's function is limited". All that is needed to support the Commission's interpretation is that it has "warrant in the record" and a "reasonable basis in law". *Labor Board* v. *Hearst Publications, Inc.*, *supra*; *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125 (1939).

Applying these tests, we are unable to say that the Commission's construction was irrational or without support in the record. The Commission apparently views a dispute as "active" during the continuance of a work stoppage induced by a labor dispute. That agency might reasonably conclude that the unemployment resulting from such work stoppage is not of the "involuntary" nature which the statute was designed to alleviate, as indicated by the statement of public policy incorporated in the Act by the Territorial Legislature.[13] We see nothing in such a view to require our substituting a different construction from that made by the Commission entrusted with the responsibility of administering the statute.[14]

Nor can we accept the argument of the majority of the Court of Appeals that since negotiations between the companies and the workers were carried on in San Francisco and Seattle, the dispute could not be said to be "at" the Alaskan establishments as required by the statute. So far as we are able to determine, this issue was injected for the first time by the opinion of the majority of the Court

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[13] The "Declaration of Territorial Public Policy" states that "*Involuntary unemployment* is . . . a subject of general interest and concern which requires appropriate action by the legislature." It is further stated that the public welfare demands the compulsory setting aside of unemployment reserves "for the benefit of persons unemployed *through no fault of their own*." Chapter 4, Extraordinary Session Laws of Alaska, 1937.

Several state courts have concluded that the disqualification relating to unemployment due to a labor dispute is a reflection of the broad policy of the legislation to compensate only persons involuntarily unemployed. *Barnes* v. *Hall*, 285 Ky. 160, 146 S. W. (2d) 929 (1940); *Deshler Broom Factory* v. *Kinney*, 140 Neb. 889, 2 N. W. (2d) 332 (1942); *Sandoval* v. *Industrial Commission*, 110 Colo. 108, 130 P. (2d) 930 (1942).

[14] *Labor Board* v. *Hearst Publications*, *supra*; *Rochester Telephone Corp.* v. *United States*, *supra*. Cf. *Social Security Board* v. *Nierotko*, 327 U. S. 358 (1946).

of Appeals. The contention does not seem to have been raised or pressed by respondents up to that point. The responsibility of applying the statutory provisions to the facts of the particular case was given in the first instance to the Commission. A reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground not theretofor presented and deprives the Commission of an opportunity to consider the matter, make its ruling, and state the reasons for its action.[15] Nor do we find the argument advanced below convincing on its merits. It is clear that the subject matter of the dispute related to the operation of the Alaskan establishments. As a result of the dispute the normal activities involved in catching and canning salmon were not carried on throughout the 1940 season at any of those establishments. We do not consider significant the fact that the companies and the union did not negotiate at the canneries or on the ships in Alaskan waters. A legislature familiar with the nature of seasonal operations carried on in the Territory could hardly have been unaware of the fact that companies and workers customarily carried on negotiations far distant from the Alaskan establishments. It seems unlikely that it was intended that this ordinary and usual procedure should defeat the disqualification for benefits incorporated in the Act. Furthermore, it should be observed that the respondent union voluntarily entered into the negotiations conducted at San Francisco and Seattle and at no time challenged the propriety of this practice. Thus if we assume with respond-

[15] Section 6 (h) of the Act states that judicial review of the Commission's decision "shall be permitted only after a party claiming to be aggrieved thereby has exhausted his administrative remedies as provided in the Act." Cf. *Myers* v. *Bethlehem Shipbuilding Co*., 303 U. S. 41, 50–51 (1938); *Regal Knitwear Co.* v. *Labor Board*, 324 U. S. 9, 13 (1945); *Phelps Dodge Corp.* v. *Labor Board*, 313 U. S. 177, 196–197 (1941).

ents that this issue is properly presented for consideration, we conclude that under the circumstances of this case the dispute was "at the factory, establishment, or other premises" in the sense intended by the Territorial Legislature.

For the reasons stated, the judgment of the Circuit Court of Appeals is affirmed insofar as it holds that the statutory eight-week period of disqualification is inapplicable to the individual respondents employed by the Alaska Salmon Company in 1939. In all other particulars, the judgment of the Circuit Court of Appeals is reversed and the case remanded to the District Court with instructions to remand for further proceedings pursuant to this opinion.